

# Chapter 2:

## Commission Rules and Regulations

An \* in the left margin indicates a change in the statute, rule, or text since the last publication of the manual.

DEPARTMENT OF REGULATORY AGENCIES  
DIVISION OF REAL ESTATE  
COLORADO REAL ESTATE COMMISSION  
4 CCR 725-1

2. Comm. Rules & Regs.

### RULES OF THE COLORADO REAL ESTATE COMMISSION

#### Rule A. License Qualifications, Applications and Examinations

**A-1. *Repealed (1-6-00)***

**A-2. *Requirements must precede exam and application.***

Educational requirements for an initial license imposed by 12-61-103(4) and (6)(c)(II), C.R.S., must be completed and proof of completion filed in a method or manner as prescribed by the Commission prior to taking the examination and applying for a license.

**A-3. *Exams given only to those qualified.***

Examinations will be given only to duly qualified applicants for a real estate broker license, licensees upgrading a license, or licensees meeting the continuing education requirement; however, one instructor from each real estate school offering real estate courses required of applicants under section 12-61-103(4) C.R.S. may write the examination one time during any 12-month period.

**A-4. *Repealed.***

**A-5. *Real estate license examination, exam expiration and application requirements.***

The real estate license examination is made up of two parts, a general portion and a state portion. If an applicant fails one or both parts of the exam, the applicant may retake the failed portion(s) at a subsequent time. A passing score for either part of the exam is valid for one year only. An application received by the Division must be accompanied by the statutory fee, proof of completion of the required education and experience requirements, and proof of successful completion of the appropriate portion(s) of the exam within the year prior to the application being received by the Division. No exam score for either portion of the exam will be considered valid after one year.

**A-6. *Repealed.***

**A-7. *Exam results certified only if licensed.***

The Real Estate Commission will not certify to any person, state or agency any information concerning the results of any examination as it pertains to any person who has written the examination unless such person is or has been licensed as a Colorado real estate broker or pursuant to such examination; except, that the Commission may authorize a special examination for existing licensees for certification purposes.

**A-8. *Repealed.***

**A-9. License processing time frames.**

Provided the applicant has submitted a complete and satisfactory application in compliance with 12-61-102 C.R.S., the Commission will issue a license within 10 business days after receipt by the Commission of satisfactory results from the fingerprint-based criminal history record check. If the application or record check is not complete or satisfactory, the applicant will be mailed a notice of deferred status. The license of a broker whose application has been approved by the Commission subject to the receipt of certain compliance items shall be issued on an inactive status if such compliance items are not submitted within 20 days after written notification by the Commission.

**A-10. Application denied or deferred; exam score extension.**

The Commission may deny or defer an original license application pursuant to 12-61-103(3). Under no circumstances will an examination be recognized by the Commission as complying with 12-61-103(6) after 18 months from the date an applicant took the examination which resulted in a passing score.

**A-11. Certificate of license history required.**

An applicant for a Colorado real estate license, who has held a real estate license in any other state must file with the application for a Colorado license a “certification of licensing history” issued by each state where the applicant is currently or was previously licensed as a real estate broker or salesperson. Such certificate must bear a date of not more than 90 days prior to the submission date of the application. If no longer licensed, such certificate must bear a date subsequent to the expiration date.

**A-12. Applicant with prior legal involvement.**

- (a) Pursuant to 12-61-103 C.R.S., an applicant who has been convicted or pleaded nolo contendere to a misdemeanor or a felony, or any like municipal code violation, or has such charges pending or has agreed to a deferred prosecution, a deferred judgment, or a deferred sentence (violations) (excluding misdemeanor traffic violations) within the last ten years must file prior to or with his or her application for licensing the following information and documentation:
  1. A written and signed personal explanation and detailed account of the facts and circumstances surrounding each violation, which shall include the statement, “I have been charged with no other criminal violations either past or pending, other than those I have stated on the application.”
  2. The completed Commission form number REC-BAA, including results of court hearing(s), in the form of copies of charges, disposition, pre-sentencing report and most recent probation or parole report.
  3. If the applicant is to be employed by another licensee, the employing broker must submit a letter stating that he/she is aware of the specific charge(s) or convictions(s).
- (b) (1) At any time prior to submission of a formal application for licensure a person may request that the Commission issue a preliminary advisory opinion regarding the potential effect that previous conduct, criminal conviction(s) or violation(s) of the real estate license law may have on a future formal application for licensure. Such opinion may be issued by the Commission, in its discretion, in order to provide preliminary advisory guidance. Any such opinion shall not be binding on the Commission or limit the Commission’s authority to investigate a future formal application for licensure. However, if the Commission issues a favorable advisory opinion, the Commission may elect to adopt such advisory

## *Chapter 2: Commission Rules and Regulations*

opinion as the final decision of the Commission without further investigation or hearing.

- (2) An individual seeking a preliminary advisory opinion under this rule is not an applicant for licensure and the issuance of an unfavorable opinion shall not prevent such individual from making application for licensure pursuant to the real estate licensing law and the rules and regulations of the Commission.

***A-13. Repealed August 2, 2005 (effective 10-2-05)***

***A-14. Repealed (effective October 30, 2008)***

***A-15. Criminal history check required prior to renewal.***

Any broker who has not submitted fingerprints to the Colorado Bureau of Investigation to be used to complete a one-time only criminal history record check, must do so prior to renewal of an active license. Renewed licenses will remain on inactive status until the Commission has received the results of a criminal record check. Fingerprints may be submitted for processing prior to renewal either electronically or on Card No. FD-258 in a manner acceptable to the Colorado Bureau of Investigation. The Commission may acquire a name-based criminal history record check for a renewing licensee who has twice submitted to a fingerprint-based criminal history record check and whose fingerprints are unclassifiable.

***A-16. Criminal history check required prior to application.***

Applicants for an initial license must submit a set of fingerprints to the Colorado Bureau of Investigation and Federal Bureau of Investigation for the purpose of conducting a state and national criminal history record check prior to submitting an application for a license. Fingerprints must be submitted to the Colorado Bureau of Investigation for processing in a manner acceptable to the Colorado Bureau of Investigation. Fingerprints must be readable and all personal identification data completed in a manner satisfactory to the Colorado Bureau of Investigation.

***A-17. Pre-license education requirements.***

The seventy two hours of instruction or equivalent distance learning hours required in 12-61-103(4)(a)(III) C.R.S. must be satisfied by successful completion of courses of study approved by the Commission as follows:

- (a) A minimum of 24 hours in Real Estate Closings; and
- (b) A minimum of 8 hours in Trust Accounts and Record Keeping; and
- (c) A minimum of 8 hours in Current Legal issues; and
- (d) A minimum of 32 hours in Practical Applications.

***A-18. Repealed (effective 1-1-96)***

***A-19. Repealed (effective 3-4-99)***

***A-20. Denied license notice required.***

If the applicant for licensure is denied by the Commission for any reason, the applicant will be informed of the denial and the reason therefore.

***A-21. Repealed (effective 1-1-97)***

***A-22. Repealed.***

**A-23. Pre-license and brokerage administration courses must be acceptable to commission.**

Completion of the courses of study approved by the Commission as required in 12-61-103(4)(a)(I), (II), (III), & 6(c) (II) C.R.S., whether through classroom or distance learning, must be based upon educational principles acceptable to the Real Estate Commission.

**A-23.5. Repealed (effective 7-31-05)**

**A-24. Commission has course audit authority.**

The Commission may audit courses and may request from each school offering a Commission approved course of study under 12-61-103(4)(a) and (b), C.R.S., all instructional material related thereto and student attendance records as may be necessary for an investigation in the enforcement of Section 103 of the License Law and Commission Rules and Regulations. The purpose of the audit shall be to ensure that schools adhere to the approved course of study, offer course material and instruction consistent with acceptable education standards and instruct in such a manner that the desired learning objectives are met. Failure to comply with the provisions of this rule may result in the withdrawal of Commission course approval.

**A-25. NSF check voids application.**

If the fees accompanying any application or registration made to the Commission (including fees for the recovery fund, renewals, transfers, etc.) are paid for by check and the check is not immediately paid upon presentment to the bank upon which the check was drawn, the application shall be canceled; the application may be reinstated only at the discretion of the Commission and upon full payment of any fees together with payment of the fee required by state fiscal rules for the clerical services necessary for reinstatement.

**A-26. Temporary broker license.**

Pursuant to 12-61-103(7)(c) C.R.S., a temporary broker's license maybe issued to a corporation, partnership or limited liability company to prevent hardship. No application for a temporary broker's license will be approved unless the designated individual is a Colorado real estate broker with two years of active license experience as indicated by the records of the Real Estate Commission. No more than two temporary licenses may be issued to any corporation, partnership or limited liability company, whether consecutive or not, during any 18 month period, except by the Commission.

## **Rule B. Continuing Education**

**B-1. When continuing education is required.**

The Commission has determined that the license renewal process can be made more efficient by apportioning license renewals throughout the entire calendar year. Brokers must satisfy the continuing education requirements prior to applying to renew an active license, to activate an inactive license or to reinstate an expired license to active status. All license renewals shall be for a full three-year period called the "anniversary date renewal period". This period shall commence on the broker's initial date of issuance, *i.e.* the anniversary date, and expire three years later on the broker's anniversary date.

**B-2. Methods of completing continuing education.**

Licensed brokers must satisfy the continuing education requirement before they apply to renew an active license, activate an inactive license, or reinstate an expired license to active status. Licensed brokers may satisfy the entire continuing education requirement through one of the following options:

## *Chapter 2: Commission Rules and Regulations*

- (a) Complete the twelve hours required by section 12-61-110.5(1)(c), C.R.S., and required by this rule in annual 4-hour increments developed by the Commission, otherwise referred to as the “Annual Commission Update Course.” Licensees who choose this option must complete an additional 12 hours of elective credit hours to meet the 24-hour total continuing education requirement during the license period in subject areas listed in section 12-61-110.5(3), C.R.S. Please note that a licensee may not take the same version of the Annual Commission Update Course more than once. If a licensed broker takes more than 12 hours of the Annual Commission Update course during a license period, the licensee will receive elective credit hours for any additional hours.
- (b) Complete the Commission approved 24-hour “Broker Reactivation Course.” This option is available to licensees under one of the following conditions:
  - (1) Licensee is currently active and did not use the Broker Reactivation Course to satisfy the Rule B-2(a) requirements in the previous license year
  - (2) Licensee is inactive or expired for up to thirty-six months prior to activating an inactive license or reinstating an expired license to active status and unable to comply with the education requirements listed in Rule B-2(a).
- (c) Pass the Colorado state portion of the licensing exam.
- (d) Complete 72 total hours of pre-licensure education concerning the understanding and preparation of Colorado real estate contracts (48 hours) and real estate closings (24 hours). The courses and course providers are required to comply with the requirements as described at section 12-61-103(4)(a), C.R.S. Any inactive or expired licensees who cannot meet the education requirements listed in Section 4(a), (b), or (c), must comply with the education requirements found in Section 4(d) before activation or reinstatement of the license.

### ***B-3. Annual Commission Update course standards.***

- (a) Pursuant to 12-61-110.5(2), C.R.S. and Rule B-2(a), the 4-hour “Annual Commission Update” course shall be developed and presented by the Division of Real Estate and furnished to approved providers. Said course shall be presented without additional development by the provider or instructor.
- (b) Any provider specified in commission rule B-6(a) or B-7(a) may request and offer the “Annual Commission Update” course. All other providers must apply annually for approval to offer the course using the commission-approved form and procedures in commission rule B-12, except that the course outline (B-12(a)) and course exam (B-12(b)) will be furnished by the Commission.
- (c) Each active licensed broker must complete the “Annual Commission Update” course by achieving a passing score of 70% on a written or on-line course examination developed by the Commission. The Commission shall provide multiple course examinations for successive use by licensed brokers failing the end-of-course examination.

### ***B-4. Distance learning permitted, defined.***

All continuing education courses may be offered and completed by distance learning (*i.e.* courses outside the traditional classroom setting in which the instructor and learner are separated by distance and/or time).

### ***B-5. Courses excluded from continuing education credit.***

The following types of courses will not qualify for continuing education credit:

- (a) Sales or marketing meetings conducted in the general course of a real estate brokerage practice.

- (b) Orientation, personal growth, self-improvement, self-promotion or marketing sessions.
- (c) Motivational meetings or seminars.
- (d) Examination preparation or exam technique courses.

***B-6. Courses automatically accepted for continuing education credit.***

The following courses, subject to all other provisions of Rule B, if within the topic areas listed in 12-61-110.5 (3) C.R.S., will be accepted for elective continuing education credit without Commission pre-approval.

- a) Courses offered by accredited colleges, universities, community or junior colleges, public or parochial schools or government agencies.
- b) Courses developed and offered by quasi-governmental agencies.
- c) Courses approved by and taken in satisfaction of another occupational licensing authority's education requirements.
- d) Courses in real property law by a provider approved by the Colorado Board of Continuing Legal and Judicial Education.
- e) Repealed.
- f) Repealed.

***B-7. The following continuing education courses must receive Commission approval prior to offering:***

- a) Courses offered by proprietary real estate schools approved by the Colorado Division of Private Occupational Schools.
- b) Currently approved courses that are affected by any substantive changes.
- c) Courses offered by any provider proposing to offer course(s) on subjects not listed in C.R.S. 12-61-110.5(3)
- d) Courses offered by proprietary real estate schools approved as out of state providers by the Colorado Department of Private Occupational Schools, and are not approved pursuant to Rule B-6.
- e) Courses offered by employing brokers to their employed brokers.
- f) Courses offered by providers exempt under the provisions of 12-59-104, C.R.S.
- g) Courses offered by local, state or national REALTOR® Associations.

***B-8. Administrative rules for continuing education courses.***

The following course format and administrative requirements apply to all Colorado continuing real estate education for licensed brokers:

- (a) Courses must be at least 1 hour in length, containing at least 50 instructional minutes.
- (b) A maximum of 8 hours of credit may be earned per day.
- (c) No course may be repeated for credit in the same calendar year.
- (d) Instructors may receive credit for classroom teaching hours once per course taught per year.
- (e) Hours in excess of 24 may not be carried forward to satisfy a subsequent renewal requirement.
- (f) No school/provider may waive, excuse completion of, or award partial credit for the full number of course hours.
- (g) No challenge exam or equivalency may substitute for the full course outline.



## *Chapter 2: Commission Rules and Regulations*

- (h) No credit may be earned for remedial education stipulated to between a licensed broker and the Commission as part of a disciplinary action, or alternative to disciplinary action.
- (i) No course offering by a provider will be accepted unless the provider has either been granted a certificate of approval by the Colorado Department of Higher Education, Division of Private Occupational Schools, or is exempt from such requirement pursuant to 12-59-104, C.R.S.
- (j) Courses approved for continuing education must maintain and improve a broker's skill, knowledge, and competency in real estate practice.

### ***B-9. Term of course approval.***

Course approval certification shall be for a period of three years, except that an annual or one-time seminar or conference offering may be approved for a specific date or dates.

### ***B-10. Proof of course completion.***

Each Colorado licensed broker is responsible for securing from the provider evidence of course completion in the form of an affidavit, certificate or official transcript of the course. Said documentation must be in sufficient detail to show the name of the licensee, course subject, content, duration, date(s) and contain the authentication of the provider. Licensees must retain proof of continuing education completion for 4 years, and provide said proof to the Commission upon request.

### ***B-11. Provider must retain records.***

Each approved provider must retain copies of course outlines or syllabi and complete records of attendance for a period of four (4) years, and provide the records to the Commission upon request.

### ***B-12. Course approval application process.***

Continuing education providers required to have Commission course approval must, in accordance with all of the provisions of this Rule B, submit an application form prescribed by the Commission, along with the following information at least 30 days prior to the proposed class dates:

- (a) Detailed course outline or syllabus, including the intended learning outcomes, the course objectives and the approximate time allocated for each topic.
- (b) A copy of the course exam(s) and instructor answer sheet if applicable. In the absence of an exam, the criteria used in evaluating a person's successful completion of the course objectives.
- (c) Copy of instructor teaching credential; if none, a résumé showing education and experience which evidence mastery of the material to be presented.
- (d) A copy of advertising or promotional material used to announce the offering.
- (e) Upon Commission request, a copy of textbook, manual, audio or videotapes, or other instructional material.
- (f) Effective January 1, 2001, providers of continuing education offered through distance learning must submit evidence in a form prescribed by the real estate commission that the method of delivery and course structure is consistent with acceptable education standards assuring that the desired learning objectives are met. The Commission will approve methods of delivery certified by the Association of Real Estate License Law Officials (ARELLO), or by a substantially equivalent authority and method.

**B-13. Providers subject to statute, rule and course audit.**

By offering real estate continuing education in Colorado, each provider agrees to comply with relevant statutes and Commission rules and to permit Commission audit of said courses at any time and at no cost.

**B-14. Licensee attests to compliance by submitting application.**

The act of submitting an application for renewal, activation or reinstatement of a real estate license shall mean that the licensee attests to compliance with the continuing education requirements of C.R.S. 12-61-110.5.

**Rule C. Licensing – Office**

**C-1. Individual proprietor must be sole owner.**

A broker licensed as an individual or as an individual doing business under a trade name shall be the sole owner of the brokerage business or such brokerage business will be considered as a partnership and the partnership shall apply for a broker's license under 12-61-103(7) C.R.S.

**C-2. Resident broker required to have office; exceptions.**

Every resident Colorado real estate broker shall maintain and supervise a brokerage practice available to the public, except those brokers registered in the Commission office as in the employ of another broker or those brokers registered as inactive.

**C-3. Responsible broker availability.**

Any broker licensed as an individual proprietorship or the acting broker for a corporation, partnership, or limited liability company must be reasonably available to manage and supervise such brokerage practice.

**C-4. Repealed effective 1-1-97**

**C-5. Repealed effective 1-1-97**

**C-6. Repealed effective 1-1-97**

**C-7. Repealed effective 1-1-97**

**C-8. Repealed effective 1-1-97**

**C-9. Repealed.**

**C-10. Repealed.**

**C-11. Repealed.**

**C-12. Repealed.**

**C-13. (a) Repealed**

**(b) Repealed**

**C-14. Repealed**

**C-15. Repealed**

**C-16. License non-transferable.**

No agreement shall be entered into by any licensee whereby an individual licensee lends their name or license for the benefit of another person, partnership, limited liability company or corporation, whereby the provisions of the Colorado Real Estate Broker License Law and Commission Rules relating to licensing are circumvented.



**C-17. Corporate license name may not duplicate suspended/revoked license.**

The Commission may refuse to issue a license to a partnership, limited liability company or corporation if the name of said corporation, partnership or limited liability company is the same as that of any person or entity whose license has been suspended or revoked or is so similar as to be easily confused with that of the suspended or revoked person or entity by members of the general public.

**C-18. Brokerage activity only in trade name or full licensed name.**

An independent or employing broker may adopt a trade name according to Colorado law and such trade name will appear on the face of the independent or employing broker's license, however, pursuant to 12-61-103(10), C.R.S. such independent or employing broker must conduct brokerage business only under such trade name or conduct brokerage business under the entire name appearing on the face of the license. Employed brokers, who are licensed under an employing broker that is doing business under a trade name, shall be licensed under the entire name appearing on the face of the license, and not under the brokerage's or individual's trade name.

**\* C-19. Repealed.**

**C-20. No license name identical to one previously issued.**

No broker's license will be issued to a broker under a trade name, corporate name, partnership name or limited liability company name which is identical to another licensed broker's trade name, corporate, partnership or limited liability company name.

**C-21. Individual proprietor may not appear to be corporate.**

A broker licensed as an individual proprietorship shall not adopt a trade name which includes the following words: Corporation, Partnership, Limited Liability Company, Limited, Incorporated, or the abbreviations thereof.

**C-22. Employing broker qualifications for business entities.**

When a broker applicant submits an application to qualify:

- (a) A corporation as a real estate brokerage company, the broker applicant must certify that:
  - 1. The corporation has been properly incorporated with the Colorado Secretary of State or is authorized to do business in Colorado, and is in good standing, proof of which shall be included with the application;
  - 2. If an assumed or trade name is to be used, it has been properly filed with and accepted by the Colorado Secretary of State, proof of which shall be included with the application;
  - 3. The broker applicant has been appointed by the board of directors to act as broker for the corporation;
- (b) A partnership as a real estate brokerage company, the broker applicant must certify that:
  - 1. The partnership has been properly registered with the Colorado Department of Revenue or properly filed with the Colorado Secretary of State and is in good standing, proof of which shall be included with the application;
  - 2. If an assumed or trade name is to be used, it has been properly filed with Colorado Department of Revenue or filed and accepted by the Colorado Secretary of State, proof of which shall be included with the application;

3. The broker applicant has been appointed the real estate broker for the partnership by all general partners or managers/officers;
- (c) A limited liability company as a real estate brokerage company, the broker applicant must certify that:
  1. The limited liability company has been properly registered with the Colorado Secretary of State and is in good standing, proof of which shall be included with the application;
  2. If an assumed or trade name is to be used, it has been properly filed with the Colorado Secretary of State, proof of which shall be included with the application;
  3. The broker applicant has been appointed the real estate broker for the limited liability company by all managers, or if management has been reserved to the members in the articles of organization, by all members;

**C-23. *Unlicensed on-site manager.***

Pursuant to 12-61-101(2), C.R.S., offering to rent or lease real estate or renting or leasing real estate requires a Colorado real estate broker's license. If a brokerage firm employs an unlicensed on-site manager, the employing broker must:

- (a) Actively and diligently supervise all activities of the on-site manager or delegate the supervisory responsibility in writing to a qualified employed broker;
- (b) Require the on-site manager to report directly to either the employing broker or the delegated employed broker;
- (c) Require the on-site manager account for and remit all monies, including rents and security deposits, collected on behalf of the broker or owner to the employing broker or the delegated employed broker;
- (d) Ensure that property maintenance scheduled by the on-site manager is performed in accordance with the executed property management agreement;
- (e) Engage the on-site manager, either as a regularly salaried employee or as an independent contractor, and pay the on-site manager through the real estate brokerage firm. The salary may include rent value or other non-commission income.
- (f) Instruct the on-site manager to not negotiate any of the material terms of a lease or rental agreement with a tenant or prospective tenant.

The unlicensed on-site manager may fill in blanks, as a scrivener, on lease forms provided by the brokerage firm, show prospective tenants available units, quote rental prices established by the owner or broker, arrange for maintenance, and collect monies, including security deposits and rents.

**C-24. *Repealed.***

**C-25. *Notice of termination; employing broker.***

The employing broker of a licensed corporation, partnership, or limited liability company must immediately notify the Commission in a manner acceptable to the Commission, of the employing broker's termination of employment with such licensed corporation, partnership, or limited liability company, or upon the employing broker's failure to continue to comply with 12-61-103, C.R.S. and applicable rules. Upon such notification, the employing broker and all employed licensees shall be placed on inactive status.

**C-26. *Inactive license.***

A broker license may be issued on an inactive status.

**Rule D. Renewal, Transfer, Inactive License, Errors and Omissions**

**Insurance**

***D-1. Repealed***

***D-2. Inactive license request.***

A real estate licensee may request that the Commission records show their license inactive until proper request for reactivation has been made.

***D-3. Inactive license must be renewed.***

A real estate licensee whose license is on inactive status must apply for renewal of such inactive license and pay the regular renewal fees.

***D-4. Renew using method approved by commission.***

Renewal of all licenses can be effected by use of the renewal application form provided by the Commission or by other methods acceptable to the Real Estate Commission.

***D-5. Repealed.***

***D-6. License renewal notification.***

Notification that a license will expire, unless renewed, will be sent to the electronic mail address on file with the Commission.

***D-7. Direct compensation from previous broker.***

When a real estate license is on an inactive status or has been transferred to a subsequent employing broker, a licensee may be compensated directly by a previous employing broker for commissions earned during that term of employment.

***D-8. Repealed.***

***D-9. Form and fees required to change license.***

No changes in license status will be made except in a manner acceptable to the Commission to effect such change and upon payment of the statutory fees for such changes.

***D-10. Repealed.***

***D-11. Initial license renewal.***

An initial license will be issued for a three-year period commencing on the issuance date and expiring three years from the date of issuance.

***D-12. Renewal fees non-refundable.***

All fees paid for the renewal of a license shall be non-refundable.

***D-13. Anniversary date renewals and reinstatements.***

License renewal periods shall begin on the anniversary date of issuance and continue for three full years. An expired license may be reinstated as follows:

- (a) If proper application is made within thirty-one days after the date of expiration, by payment of the regular renewal fee;
- (b) If proper application is made more than thirty-one days but within one year after the date of expiration, by payment of the regular renewal fee and payment of a reinstatement fee equal to one-half the regular renewal fee;

- (c) If proper application is made more than one year but within three years after the date of expiration, by payment of the regular renewal fee and payment of a reinstatement fee equal to the regular renewal fee.

**D-14. Errors and omissions (E&O) insurance (See 12-61-103.6, C.R.S.)**

Every active real estate licensee shall have in effect a policy of errors and omissions insurance to cover all acts requiring a license. In addition, all active licensed real estate companies that employ licensees in addition to the responsible broker must also have in effect a policy of errors and omissions insurance to cover all acts requiring a license.

- \* (a) The Commission shall enter into a contract with a qualified insurance carrier to make available to all licensees and license applicants a group policy of insurance under the following terms and conditions (hereafter referred to as the "Commission Insurance Policy"):
  - (1) The insurance carrier is licensed and authorized by the Colorado Division of Insurance to write policies of errors and omissions insurance in this state.
  - \* (2) The insurance carrier maintains an A.M. Best rating of "A-" or better.
  - (3) The insurance carrier will collect premiums, maintain records and report names of those insured and a record of claims to the Commission on a timely basis and at no expense to the state.
  - (4) The insurance carrier has been selected through a competitive bidding process.
  - (5) The contract and policy are in conformance with this rule and all relevant Colorado statutory requirements.
- \* (b) The Commission Insurance Policy shall provide, at a minimum, the following terms of coverage:
  - (1) Coverage for all acts for which a real estate license is required, except those illegal, fraudulent or other acts which are normally excluded from such coverage.
  - \* (2) That the coverage cannot be canceled by the insurance carrier except for nonpayment of the premium or in the event a licensee becomes inactive or is revoked or an applicant is denied a license.
  - \* (3) Pro-ration of premiums for coverage which is purchased during the course of a calendar year but with no provision for refunds of unused premiums.
  - \* (4) Not less than \$100,000 coverage for each licensed individual and entity per covered claim regardless of the number of licensees or entities to which a settlement or claim may apply, not including costs of investigation and defense.
  - \* (5) An annual aggregate limit of not less than \$300,000 per licensed individual or entity, not including costs of investigation and defense.
  - \* (6) Coverage for investigation and defense shall be provided in addition to policy coverage limits.
  - (7) A deductible amount for each occurrence of not more than \$1,000 for claims and no deductible for legal expenses and defense.
  - (8) The obligation of the insurance carrier to defend all covered claims and the ability of the insured licensee to select counsel of choice subject to the written permission of the carrier, which shall not be unreasonably withheld.
  - (9) Coverage of a licensee's use of lock boxes, which coverage shall not be less than \$25,000 per occurrence.
  - \* (10) The ability of a licensee, upon payment of an additional premium, to obtain higher or excess coverage or to purchase additional coverage from the state carrier as may be determined by the carrier.

*Chapter 2: Commission Rules and Regulations*

- (11) That coverage is individual and license specific and will cover the licensee regardless of changes in employing broker.
- (12) The ability of a licensee, upon payment of an additional premium to obtain an extended reporting period of not less than 365 days.
- (13) A conformity endorsement allowing a Colorado resident licensee to meet the errors and omissions insurance requirement for an active license in another group mandated state without the need to purchase separate coverage in that state.
- \* (14) Prior acts coverage shall be offered to licensees with continuous past coverage.
- \* (c) Licensees or applicants may obtain errors and omissions coverage independent of the Commission Insurance Policy from any insurance carrier subject to the following terms and conditions:
  - \* (1) For both individual and entity/group policies, the insurance carrier must be licensed and authorized by the Colorado Division of Insurance to write policies of errors and omissions insurance in this state and must be in conformance with all Colorado statutes.
  - \* (2) The insurance provider maintains an A.M. Best rating of “A-” or better.
  - \* (3) Individual policies must, at a minimum, comply with the following conditions and the insurance carrier must certify compliance in an affidavit issued to the insured licensee or applicant in a form specified by the Commission. Insurance carrier agrees to immediately notify the Commission of any cancellation or lapse in coverage. Independent individual coverage must provide, at a minimum, the following:
    - (i) The contract and policy are in conformance with all relevant Colorado statutory requirements.
    - \* (ii) Coverage includes all acts for which a real estate license is required, except those illegal, fraudulent or other acts that are normally excluded from such coverage.
    - \* (iii) Coverage cannot be canceled by the insurance carrier except for nonpayment of the premium. Cancellation notice must be provided in a manner that complies with 10-4-109.7(1), C.R.S.
    - \* (iv) Coverage is for not less than \$100,000 for each licensed individual and entity per covered claim, with an annual aggregate limit of not less than \$300,000 per licensed individual and entity, not including costs of investigation and defense. Coverage for investigation and defense shall be provided in addition to policy coverage limits.
    - \* (v) A deductible amount for each occurrence of not more than \$1,000 for claims and the provider shall look to the insured for payment of any deductible.
    - \* (vi) Payment of defense costs by the provider shall be on a first dollar basis. That is, the insured is not required to pay anything towards the cost of defense of any claim or complaint.
    - \* (vii) The ability of a licensee, upon payment of an additional premium to obtain an extended reporting period of not less than 365 days within sixty (60) days of the initial coverage ending.
    - \* (viii) That the provider of the independent policy has executed an affidavit in a form or manner specified by the commission attesting that the independent policy is in force and, at a minimum, complies with all relevant conditions set forth herein and that the provider will immediately notify the

Commission in writing of any cancellation or lapse in coverage of any independent policy.

- \* (ix) Coverage of a licensee's use of lock boxes, which coverage shall not be less than \$25,000 per occurrence.
- \* (x) Prior acts coverage shall be offered to licensees with continuous past coverage.
- \* (4) For firms and sole-proprietor brokerages with independently carried firm coverage, section (3) will apply except sections (3)(iv), (3)(v) and (3)(x) shall be replaced with the following:
  - \* (i) The per claim limit shall be not less than \$1,000,000.
  - \* (ii) The aggregate limit shall be not less than \$1,000,000.
  - \* (iii) The maximum deductible amount for each occurrence shall not exceed \$10,000 and the provider shall look to the insured for payment of any deductible.
- (d) Applicants for licensure, activation, renewal and reinstatement shall certify compliance with this rule and 12-61-103.6, C.R.S., on forms or in a manner prescribed by the Commission. Any active licensee who so certifies and fails to obtain errors and omissions coverage or to provide proof of continuous coverage, either through the group carrier or directly to the Commission, shall be placed on inactive status:
  - (1) Immediately, if certification of current insurance coverage is not provided to the Commission; or,
  - (2) Immediately upon the expiration of any current insurance when certification of continued coverage is not provided.

***D-15. Repealed.***

***D-16. Repealed.***

## **Rule E. Separate Accounts – Records – Accountings – Investigations**

### ***E-1. Trust Accounts; Requirements and Purposes.***

All "money belonging to others" accepted by a resident or non-resident broker doing business in this state shall be deposited in one or more accounts separate from other money belonging to the broker or brokerage entity. The broker shall identify the fiduciary nature of each separate account in the deposit agreement with the recognized bank or institution by the use of the word "trust" or "escrow" and a label identifying the purpose/type of such account, *i.e.*, "sales escrow", "rental escrow", "security deposit escrow", "owners association escrow", or other abbreviated form defined in the deposit agreement. Unless otherwise permitted by other subsections of this rule, all money belonging to others shall be deposited according to the purpose of the transaction in separate types of escrow accounts. The broker shall retain a copy of each account deposit agreement executed for inspection by an authorized representative of the Commission.

- (a) Accounts in name of broker and business entity

Such separate trust accounts must be maintained in the name of the licensed broker or if the licensed broker is a partnership, corporation or limited liability company, such account shall be maintained in the name of the broker acting for such partnership, corporation or limited liability company and in the name of the licensed partnership, limited liability company or corporation. The licensed broker must be able to withdraw money from such separate account, but may authorize other licensed or unlicensed



## *Chapter 2: Commission Rules and Regulations*

cosigners. However, such authorization shall not relieve the broker of any responsibility under the licensing act.

(b) Accounts in name of employing broker only

When a broker is registered in the office of the Real Estate Commission as in the employ of another broker the responsibility for the maintenance of all trust accounts shall be the responsibility of the employing broker.

(c) Escrow funds must be available immediately without penalty

Money belonging to others shall not be invested in any type of account or security or certificate of deposit which has a fixed term for maturity or imposes any fee or penalty for withdrawal prior to maturity unless the written consent of all parties to the transaction has been secured.

(d) Repealed (effective 1-1-96)

(e) Commingling prohibited

A broker's personal funds shall not be commingled with money belonging to others except that an arrangement may be made with a depository to deposit a sufficient amount of the broker's funds to maintain such account. One or more separate escrow or trust bank accounts may be maintained by a broker pursuant to the following duties and limitations:

- (1) Money held in an escrow or trust account which is due and payable to the broker shall be withdrawn promptly.
- (2) An escrow or trust account shall not be used as a depository for money belonging to licensees employed by a broker except pursuant to an executory sales contract, nor shall it be used for money the broker owes their licensees, or for bonuses or investment plans for the benefit of their licensees.
- (3) Collections for insurance premiums and/or IRS employee's withholding funds shall not be deposited in a separate trust account established pursuant to 12-61-113 (g) and (g.5) C.R.S.
- (4) Money advanced by a broker for the benefit of another may be placed in the trust account and identified as an advance but may be withdrawn by the broker only on behalf of such person. Any amount advanced to an escrow or trust account must be identified and recorded in the escrow journal, the beneficiary ledger and disclosed in periodic accounting to the beneficiary.
- (5) Funds of others received by a broker relating to real estate partnerships, joint ventures and syndications in which the broker has an ownership interest and also receives compensation for selling or leasing the property shall be maintained in a trust account separate from any other trust account maintained by such broker.
- (6) In the absence of a specific written agreement to the contrary, commissions, fees and other charges collected by a broker for performing any service on behalf of another are considered "earned" and available for use by the broker only after all contracted services have been performed and there is no remaining right of recall by others for such money. The broker shall identify and record all commissions, fees, or other charges withdrawn from a trust or escrow account on the account journal and individual ledgers of those against whom the fees or commissions are charged. If a single disbursement of fees or commissions includes more than one transaction, rental period or occupancy or includes withdrawals from the account of more than one trust or escrow account beneficiary, the broker, upon request, shall produce for inspection by an authorized representative of the Real Estate Commission a schedule which details (1) the individual components of all

amounts included in the sum of such disbursement and (2) specifically identifies the affected beneficiary or property ledgers. Ledger entries must detail such disbursements in accordance with Rule E-l(p)(2), including the date or time period for each individual transaction, rental or occupancy.

- (f) Money belonging to others defined  
Money belonging to others which is received by the broker includes but is not limited to money received in connection with: property management contracts; partnerships; limited liability companies; syndications; rent or lease contracts; advance fee contracts; guest deposits for short term rentals; escrow contracts; collection contracts; earnest money contracts; or, money belonging to others received by the broker for future investment or other purpose.
- (g) Earnest money on new construction  
If a broker who is also acting as a builder receives deposit money under an executory sales contract which provides for the construction of a house, the deposit money must be placed in a trust account and not used for construction purposes unless the written consent of the purchaser is secured.
- (h) Separate escrow accounts required for managing 7 or more residences  
A broker who manages less than seven (7) single-family residential units may deposit rental receipts and security deposits and disburse money collected for such purposes in the "sales escrow" account.
- (i) Repealed (effective 1-1-96)
- (j) Installment land contract  
If a conveyance is made by an installment contract for a deed and if such contract contains a provision whereby the broker signs the installment contract as the receipting broker, the broker must escrow the receipted money pursuant to Rule E-l until the owner signs acceptance of the contract and a copy of the fully executed contract is delivered to the purchaser.
- (k) Encumbrance before delivery of deed  
When a sales contract or an installment contract for the sale of an interest in real estate is signed by the parties to the transaction and the purchaser also executes a promissory note and/or a mortgage or trust deed encumbering such property before the seller delivers the deed, then all payments received by the broker pursuant to such contract shall be deposited in a trust account in a recognized depository until delivery of such deed to the purchaser unless the broker receives specific written consent from all parties concerning disposition of such funds. This rule shall apply whether or not the broker and seller are one and the same.
- (l) Earnest money  
Checks received as earnest money under an earnest money contract must be identified as a check in the contract and may be withheld from presentment for payment only if so disclosed in the contract or pursuant to the written instructions of the seller. If a note is received as earnest money under an earnest money contract, the seller must be informed by identifying the note in the contract and by informing the seller of the date such note becomes due by stating the due date in the contract or attaching a copy of the note to the contract. The broker must present the note or check for payment in a timely manner and if payment is not made, the broker shall promptly notify the seller.

## *Chapter 2: Commission Rules and Regulations*

(m) Time limits for deposit of money belonging to others

Except as provided in Rule E-1 (o), all money belonging to others which is received by a broker as a property manager shall be deposited in such broker's escrow or trust account not later than five business days following receipt. All other money belonging to others which is received by a broker shall be deposited in such broker's escrow or trust account not later than the third business day following receipt.

(n) Listing broker holds escrow funds; delivery to third party

Except as otherwise agreed to in writing, in any real estate transaction in which one broker holds a listing contract on a property and where the selling broker receipts for earnest money under a contract, the selling broker shall deliver the contract and the earnest money to the listing broker who shall deposit the earnest money in the broker's escrow or trustee account in a recognized depository not later than the third business day following the day on which the broker receives notice of acceptance of such contract. If such selling broker receipts for a promissory note, or thing of value, such note or thing of value shall be delivered with the contract to the listing broker to be held by the listing broker. Any check or note shall be payable to, or assigned to, the listing broker.

- (1) The broker receipting for the earnest money deposit, if instructed in writing by the parties to the contract, shall deliver the earnest money to a third party or entity so identified in writing. If the broker is instructed in writing by the parties to the contract to deliver an earnest money deposit to such third party or entity, the broker shall retain in the office transaction file a copy of the earnest money check, note or other thing of value, including any endorsement, and obtain a dated and signed receipt from the person or entity to whom the broker has been instructed to deliver the deposit.

(o) Recordkeeping requirements

A broker shall supervise and maintain, at the broker's licensed place of business, a record keeping system, subject to subsection (7) of this rule, consisting of at least the following elements for each required escrow or trust account:

- (1) A record called an "escrow or trust account journal" or an equivalent accounting system which records in chronological sequence all money belonging to others which is received or disbursed by the broker. For funds received, the records maintained in the system must include the date of receipt and deposit, the name of the person who is giving the money, the name of the person and property for which the money was received, the purpose of the receipt, the amount, and a resulting cash balance for the account. For funds disbursed, the records maintained in the system must include the date of payment, the check number, the name of the payee, a reference to vendor documentation or other physical records verifying purpose for payment, the amount paid, and a resulting cash balance for the account.
- (2) A record collectively called a "ledger" or an equivalent component of an accounting system which records in chronological sequence all money which is received or disbursed by the broker on behalf of each particular beneficiary of a trust account. This record must show the monetary transactions affecting each individual beneficiary and must segregate such transactions from those pertaining to other beneficiaries of the trust account. The ledger record for each beneficiary must contain the same transactional information as is prescribed in subsection (1). No ledger may ever be allowed to have a negative cash balance and the sum

of all ledger balances must at all times agree with the corresponding cash balance in the journal after each transaction has been posted.

- (3) A written monthly record called the “bank reconciliation worksheet” which proves agreement, on the date of reconciliation, between (1) the cash balance shown in the account journal; (2) the sum of the cash balances for all ledgers; and (3) the corresponding bank account balance. This worksheet must be maintained in hard copy form for later inspection and list each beneficiary’s ledger balance on the date of reconciliation. The broker is not required to reconcile any trust account when no money belonging to others has been received or no banking activity has occurred.
- (4) When managing property, if summary totals are reported to others, the broker must maintain supporting records which accurately detail all cash received and disbursed under the terms of the management and rental agreements. Such summary totals must be reconcilable to detailed supporting records. Any accounting report furnished to others must be prepared and delivered according to the terms of the management agreement or, in the absence of a provision in the written management agreement to the contrary, within thirty (30) days after the end of the month in which funds were either received or disbursed.
- (5) If a broker has on deposit personal funds sufficient to maintain the trust account pursuant to Rule E-1(f), an entry showing such money shall be made in the journal and on a “broker’s ledger record” per subsections (1) and (2). Such money shall be included in the bank reconciliation worksheet.
- (6) All deposits of funds into an escrow or trust account must be documented ( *i.e.*, bank deposits) including confirmation of electronic and telephonic transfers or on detailed schedules attached to the deposit slips or confirmations. The documentation must identify each person tendering funds to the broker for deposit, the amount of funds tendered, types of funds received from each person, and the property address, affected. All disbursements of funds from an escrow or trust account must be supported by source documents such as bids, invoices, contracts, etc. that identify the payees, property addresses affected and amount of funds transferred for each property. Real estate licensees shall produce for inspection by an authorized representative of the real estate commission any cancelled checks (or front and back copies) or hardcopy confirmations of electronic or telephonic transfers as may be reasonably necessary to complete audits or investigations.
- (7) In the absence of a written agreement to the contrary, the “cash basis” of accounting shall be used for maintaining all required escrow or trust accounts and records. If the “accrual basis” of accounting is requested by the beneficiary of funds entrusted to a broker, such request must be in writing and the broker shall maintain separate accrual basis accounts and sets of records for each person or entity affected; such accounts and records shall be separate from other accounts and records maintained on the cash basis.
- (8) Pursuant to C.R.S. 12-61-113(l)(c.5),(q) and 6-1-105, the broker must obtain prior written consent to assess and receive mark-ups and/or other compensation for services performed by any third party or affiliated business entity. The broker must retain accurate on-going office records which verify disclosure and consent, and which fully account for the amounts or percentage of compensation assessed or received.

## *Chapter 2: Commission Rules and Regulations*

- (p) Diversion/Conversion prohibited  
Money belonging to one beneficiary of a separate trust or escrow account shall not be used for the benefit of another beneficiary of a trust, or escrow account.
- (q) Items in lieu of cash  
Any instrument or equity or thing of value taken in lieu of cash shall be held by the broker except as otherwise agreed.
- (r) Branch office trust accounts require branch office recordkeeping  
In the event a branch office maintains a trust account, separate from the trust account(s) maintained by the main office, a separate record keeping system must be maintained in the branch office.
- (s) Repealed (effective 1-1-96)
- (t) Number of separate accounts may vary from zero to unlimited  
A broker is not limited as to the number of separate accounts which may be maintained for money belonging to others and if the broker is not in possession of money belonging to others, there is no obligation to maintain a separate account.

### ***E-2. Payment earned after performance; Account within 30 days; non-refundable retainers.***

When money is collected by a broker for the performance of specific services or for the expenses of performing such services, or for any other expense including but not limited to advertising expenses in regard to the sale or management of real property, or a business opportunity, and such money is collected before the advertising or other services have been performed, the broker shall deposit such money in an escrow or trust account pursuant to 12-61-113(1)(g.5) C.R.S. No money may be withdrawn from such person's funds, except for actual authorized expenses paid to perform the service, or on behalf of that person, until the broker has fully performed the services agreed upon. A full and itemized accounting must be furnished the person within 30 days of any withdrawal of funds from the escrow or trust account. Nothing in this section shall prohibit a licensee from taking a non-refundable retainer which need not be deposited into an escrow or trust account provided this is specifically agreed to in writing between the licensee and the person paying the retainer.

### ***E-3. Licensee must produce records; HOA records belong to HOA.***

A real estate licensee shall produce for inspection by an authorized representative of the Real Estate Commission any document or record as may be reasonably necessary for investigation or audit in the enforcement of Title 12 Article 61 and in enforcement of the rules and regulations of the Real Estate Commission. Failure to submit such documents or records within the time set by the Commission in its notification shall be grounds for disciplinary action unless the Commission has granted an extension of time for such production. However, a broker who is also acting as a manager for an owners association shall turn all association management records and supporting documentation over to the association at the end of the broker's term of management. Such records are the property of the owners association and if the broker wishes to maintain copies for the broker's own files these must be made at the broker's expense.

### ***E-4. Document Preparation and Duplicates.***

Contracting instruments for all real estate or business opportunity transactions in which a real estate broker participates, including agency and sales contracts, shall accurately reflect the financial terms of the transaction by itemizing things of value paid or received and identifying the party or parties conveying, receiving and/or ultimately benefitting from such things of value. All such terms made subsequent to the original contracting document shall be



disclosed in an amending instrument. For the purpose of this rule, the term “things of value” shall include monetary considerations as well as the exchange of tangible, non-monetary assets.

A real estate broker shall immediately deliver a duplicate of the original of any instrument (except deeds, notes and trust deeds or mortgages, prepared by and for the benefit of third party lenders) to all parties executing the same when such instrument has been prepared by the broker or the broker’s employed licensee or closing entity and relates to the employment or engagement of the broker or pertains to the consummation of the leasing, purchase, sale or exchange of real property in which the broker may participate as a broker. For purposes of this rule, duplicate shall mean legible photocopy, carbon copy, facsimile, or electronic copies which contain a digital or electronic signature as defined in 24-71-101(1) C.R.S. Such broker shall retain a copy of the duplicate instruments for future use or inspection by an authorized representative of the Real Estate Commission. If a broker or the broker’s agent prepares a mortgage or trust deed for the benefit of a buyer or seller, an unsigned duplicate of such security instrument, together with a copy of the note, unsigned or prominently marked “copy,” shall be furnished to the purchaser; copies shall also be retained in such broker’s office for further use or inspection by an authorized representative of the Real Estate Commission. Cooperating brokers, including brokers acting as agents for buyers in a specific real estate transaction, shall have the same requirements for retention of copies as stated above, except that a cooperating broker who is not a party to the listing contract need not retain a copy of the listing contract or the seller’s settlement statement. Pursuant to Rule E-3, a broker is not required to obtain and retain copies of existing public records, title commitments, loan applications, lender required disclosures or related affirmations from independent third party closing entities after the settlement date.

***E-5. Closing responsibility; closing statement distribution.***

Pursuant to 12-61-113 (1)(h), at time of closing, the individual licensee who has established a brokerage relationship with the buyer or seller or who works with the buyer or seller as a customer, either personally or on behalf of an employing broker, shall be responsible for the proper closing of the transaction and shall provide, sign and be responsible for an accurate, complete and detailed closing statement as it applies to the party with whom the brokerage relationship has been established. If signed by an employed licensee, closing statements shall be delivered to the employing broker immediately following closing. Nothing in this rule shall relieve an employing broker of the responsibility for fulfilling supervisory responsibilities pursuant to 12-61-103 (6)(c), 12-61-113(1)(o), 12-61-118 C.R.S and Rules E-31 and E-32.

- (a) Subject to Rule E-4, an employing or independent broker with whom a brokerage relationship has been established, either personally or through an employed licensee, shall retain a copy of all closing statements approved by the respective buyers or sellers for future use or for inspection by an authorized representative of the Real Estate Commission.
- (b) The closing statement or statements of all real estate or business opportunity transactions in which a real estate broker participates shall show the date of closing, the total purchase price of the property, itemization of all adjustments, money, or things of value received or paid showing to whom each item is credited and/or to whom each item is debited, the dates of the adjustments shall be shown if not the same as the date of the closing, also shown shall be the balances due from the respective parties to the transaction, and the names of the payees, makers and assignees, of all notes paid or made or assumed; the statements furnished to each party to the transaction shall contain an itemization of such credits and such debits as pertain to each respective party. THE



## Chapter 2: Commission Rules and Regulations

CREDITS AND DEBITS CONCERNING THE SALE OF A PREOWNED HOME WARRANTY SERVICE CONTRACT SHALL BE DISCLOSED ON THE CLOSING STATEMENTS.

- (c) Closing statements shall be provided to the respective parties at the time of the delivery and acceptance of the title whether such delivery and acceptance be effected by bill of sale, deed or by an installment contract to give a deed at a future date.
- (d) If closing documents and statements are prepared by, and the closing is conducted by, an employing broker's company such broker is primarily responsible for the accuracy and completeness of the settlement statements and documents.
- (e) If a licensee with whom a brokerage relationship has been established is unable to attend a closing or review closing documents, another licensee may agree or be designated by an employing broker to review and sign a closing statement and will assume joint responsibility with the absent licensee for its accuracy, completeness and delivery.
- (f) A broker may transfer funds pertinent to a real estate transaction from a trust or escrow account to a lawyer or a closing entity acting on behalf of the broker at or before closing or final settlement. The broker will not be relieved of responsibilities in regard thereto. The broker delivering the earnest money deposit to a lawyer or a closing entity providing settlement services shall obtain a dated and signed receipt from the person or entity providing settlement services and retain a copy of the receipt in the office transaction file. The settlement statements prepared by the lawyer or closing entity shall bear the names of the licensee who signs the statement and the employing broker if applicable.

### ***E-6. Electronic Records.***

Records as required under Title 12, Article 61, Parts 1-8 C.R.S. and rules promulgated by the Commission, may be maintained in electronic format. An electronic record as defined in 24-71.7-103 C.R.S. means a record generated, communicated, received, or stored by electronic means. Such electronic records shall be produced upon request by the Commission and must be in a format that has the continued capability to be retrieved and legibly printed. Upon request of the Commission, or by any principal party to a transaction, printed records shall be produced.

### ***E-7. Repealed (Effective February 1, 2001)***

### ***E-8. Advertising.***

- \* A. Names
- \*
  - 1. Pursuant to C.R.S. §12-61-103(10), no Broker shall be licensed to conduct real estate brokerage services under more than one Brokerage Firm, and no Broker or Brokerage Firm shall conduct or promote a real estate brokerage business except in the name under which that Broker or Brokerage Firm is licensed. However, a Brokerage Firm may use a Trade Name in addition to or instead of the Brokerage Firm's legal name with the permission of the owner of such Trade Name. The Trade Name must be filed with the Commission.
  - \* 2. No Broker shall Advertise so as to mislead the public concerning the identity of the Broker or the Broker's Brokerage Firm.
  - \* 3. All Advertising must be done CLEARLY AND CONSPICUOUSLY in the name of the Broker's Brokerage Firm. A Broker who advertises property owned by the Broker which is not listed for sale or lease with the Broker's Brokerage Firm, is

exempt from advertising the Broker's Property in the Broker's Brokerage Firm's name.

- \* 4. A Brokerage Firm may use a Trademark in conjunction with the Brokerage Firm's legal name or Trade Name with permission of the owner of such Trademark.
- \* 5. A Brokerage Firm that uses a Trade Name or Trademark owned by a third party are required to use the following legend, which must appear in a clear and conspicuous manner so as to attract the attention of the public:  
"Each (insert general trade name) brokerage business is independently owned and operated."
- \* 6. Upon written request, this legend may be modified with consent of the Commission.
- \* 7. No Brokerage Firm shall use more than one Trade Name, however upon written request and with the consent of the Commission, a Brokerage Firm may use more than one Trademark. Use of the Trademark(s) is only acceptable if the Brokerage Firm has obtained permission of the registrant of such Trademark.
- \* 8. No Broker or Brokerage Firm will use a professional designation in Advertising unless the Broker or Brokerage Firm is in good standing and the designation is easily verifiable by the public and the Commission. A Broker or Brokerage Firm that advertises an award, membership or achievement must be able to provide verification of the validity of such claims.

\* B. Teams

- \* 1. Brokers who form a Team shall not Advertise in a manner that misleads the public as to the identity of the Team's Brokerage Firm. Teams are prohibited from using the following terms in the Team's name:
  - \* i. Realty,
  - \* ii. Real estate,
  - \* iii. Realtors,
  - \* iv. Company,
  - \* v. Corporation,
  - \* vi. Corp.,
  - \* vii. Inc.,
  - \* viii. LLC,
  - \* ix. LP or LLP
  - \* x. Or any other term that would imply a separate entity from the Brokerage Firm with which the Team Brokers are licensed.
- \* 2. All Team Advertising must include the legal name or Trade Name of the Brokerage Firm.
- \* 3. If requested by a consumer, the Commission, another Brokerage Firm or a Broker, the Brokerage Firm will provide the names of the Brokers that belong to any Team Advertising as being licensed with the Brokerage Firm.
- \* 4. Brokers may not allow the use of the Team name to other Brokers outside the Team's Brokerage Firm.

\* C. Internet

- \* 1. The Broker is responsible for ensuring that all Advertising is accurate and complies with copyright laws.

## Chapter 2: Commission Rules and Regulations

- \* 2. When a Broker owns a website or controls its content, every Viewable Page must include the Broker's Name, or if applicable the Team Name, and the Broker's Brokerage Firm. Any expired listings must be removed from the Broker's website within three days of the listing expiring.
- \* 3. If a Broker authorizes a third party to Advertise on behalf of the Broker, the Broker is responsible for ensuring that the information provided to such third party is accurate. The Broker must submit a written request to the third party to have an expired listing removed from the website within three days of the listing expiring.
- \* 4. A Broker, who communicates through email, chat, instant messages, newsgroups, discussions lists, bulletin boards, blogs or other similar means for purposes of Advertising Broker's real estate brokerage services must use the Broker's name, or if applicable the Team Name, and the name of the Broker's Brokerage Firm. However, once a Broker has disclosed the Broker's name and the Broker's Brokerage Firm to a specific client or customer, the Broker is not required to continue to make the same disclosure to the specific client or customer.
- \* 5. When it is not reasonable for a Broker to disclose the Broker's name, or if applicable the Team Name, and Brokerage Firm in electronic Advertising because space is limited (i.e. Twitter, Facebook, youtube, banner advertisements, etc.), the Broker will disclose clearly and conspicuously on the Broker's webpage to which the Advertising links, within the first click of the mouse.
- \* D. Sales data
- \* 1. General Advertising which recaps sales activity over a period of time in a given subdivision or geographical area must:
  - \* i. cite the source of the data;
  - \* ii. include a disclaimer that all reported sales were not necessarily listed or sold by the Broker; and
  - \* iii. are intended only to show trends in the area or shall separately identify the Broker's own sales activity.

### ***E-9. Repealed effective 1-1-97***

### ***E-10. License non-transferable. Associates not independent or employing.***

A broker license is non transferable. No licensee shall, and no broker shall permit, employed licensees to present or to hold themselves out to the public as an employing or independent real estate broker.

### ***E-11. Listing must have termination date.***

When a licensee secures a written agreement to perform activities requiring a license, a definite date for termination shall be included therein.

### ***E-12. Holdover agreement.***

When a written agreement contains a provision entitling the broker to a commission on a sale or purchase made after the expiration of the agreement, such provision must refer only to those persons or properties with whom or on which the broker negotiated during the term of the agreement, and whose names or addresses were submitted in writing to the seller or buyer during the term of the agreement, including any extension thereof.

### ***E-13. Sign-crossing rule.***

A real estate licensee shall not negotiate a sale, exchange, lease or listing contract of real property directly with an owner for compensation from such owner if such licensee knows

that such owner has a written unexpired contract in connection with such property which grants to another licensee an exclusive right to sell or lease or which grants an exclusive agency right to sell or lease.

However, when a licensee is contacted by an owner regarding the sale, exchange, lease or listing of property that is exclusively listed with another broker, and the licensee has not initiated the discussion, the licensee may negotiate the terms upon which to take a future listing or, alternatively, may take a listing to become effective upon expiration of any existing exclusive listing.

Additionally, a real estate licensee shall not negotiate a purchase, exchange, lease or exclusive right to buy contract with a buyer if such licensee knows that such buyer has a written, unexpired contract which grants to another licensee an exclusive right to buy.

However, when a licensee is contacted by a buyer regarding the purchase, exchange or lease of property, and the licensee has not initiated the discussion, the licensee may enter into or negotiate the terms upon which to enter into a future exclusive right to buy contract to become effective upon expiration of any existing exclusive right to buy contract.

***E-14. Licensee must recommend title exam & legal counsel.***

A real estate licensee shall recommend, before the closing of a real estate transaction, the examination of title and shall advise the use of legal counsel.

***E-15. No broker right to earnest money return.***

When for any reason the owner fails, refuses, neglects or is unable to consummate the transaction as provided for in the contract, and through no fault or neglect of the purchaser the real estate transaction cannot be completed, the broker has no right to any portion of the deposit money which was deposited by the purchaser, even though the commission is earned, and such deposit should be returned to the purchaser at once and the broker should look to the owner for compensation.

***E-16. Owner-held security deposits.***

A broker receipting for security deposits shall not deliver such deposits to an owner without the tenant's written authorization in a lease or unless written notice has been given to the tenant by first class mail. Such notice must be given in a manner so that the tenant will know who is holding the security deposit and the specific requirements for the procedure in which the tenant may request return of the deposit. If a security deposit is delivered to an owner, the management agreement must place financial responsibility on the owner for its return, and in the event of a dispute over ownership of the deposit, must authorize disclosure by the broker to the tenant of the owner's true name and current mailing address. The broker shall not contract with the tenant to use the security deposit for the broker's own benefit.

***E-17. Repealed (Effective June 30, 2004)***

***E-18. Fees from Mortgage Lenders Require Prior Written Approval.***

A licensee shall not accept, directly or indirectly, a placement fee, commission or other valuable consideration for placing a loan with a mortgage lender or its representative in any real estate transaction in which the licensee, directly or indirectly, received, or is entitled to receive a commission as a result of the sale of property in such transaction unless the licensee fully informs any party with whom they have established a brokerage relationship, or worked with as a customer, and obtains prior written consent of such party. All licensees must comply with the RESPA statute and regulations regarding receipt of referral fees. To the extent Rule E-18 on referral fees differs from that of RESPA, licensees should comply with

## *Chapter 2: Commission Rules and Regulations*

RESPA to avoid jeopardizing their standing with respect to federally related loan programs and are advised to contact the Consumer Financial Protection Bureau for further clarification.

### ***E-19. Fees from title insurance companies prohibited.***

A licensee shall not accept a commission, fee, or other valuable consideration from an abstract or title insurance company or its representative in any real estate transaction in which the licensee, directly or indirectly, receives, or is entitled to receive, a real estate commission as a result of the sale of property in such transaction. (Statement of Basis and Purpose as adopted by the Real Estate Commission on October 5, 1988.)

### ***E-20. Property list price must be set by owner.***

The licensee shall not submit or advertise property without authority, and, in any offering, the price quoted should not be other than that agreed upon with the owners as the offering price.

### ***E-21. Licensee must respond to complaint or audit notice in writing.***

When a licensee has received written notification from the Commission that a complaint has been filed against the licensee, the licensee has been selected for an audit, or that an audit has identified record keeping or trust account deficiencies, such licensee shall submit a written answer to the Commission. Failure to submit a written answer within the time set by the Commission in its notification shall be grounds for disciplinary action unless the Commission has granted an extension of time for the answer in writing and regardless of the question of whether the underlying complaint warrants further investigation or subsequent action by the Commission. The licensee's written answer shall contain the following:

- (a.) A complete and specific answer to the factual recitations, allegations or averments made in the complaint filed against the licensee, whether made by a member of the public, on the Commission's own motion or by an authorized representative of the Commission.
- (b.) A complete and specific response to any additional questions, allegations or averments presented in the notification letter.
- (c.) Any documents or records requested in the notification letter.
- (d.) Any further information relative to the complaint that the licensee believes to be relevant or material to the matters addressed in the notification letter.

### ***E-22. Inducements for settlement services prohibited.***

Pursuant to 12-61-113.2, C.R.S and the Federal Real Estate Settlement and Procedures Act, 12 U.S.C. Sec. 2601 et. seq., a real estate broker, whether engaged in an affiliated business arrangement or not, shall not accept or give any incentive, disincentive, remuneration, commission, fee or other thing of value to or from a settlement service provider for the referral of business in a real estate transaction involving a federally related mortgage loan. Real estate brokers are allowed to pay a referral fee to another licensed real estate broker if reasonable cause exists as set forth in 12-61-203.5, C.R.S. nothing in this rule shall prohibit a person or entity from receiving a bona fide salary, commission or other compensation for services rendered or as a return on their ownership interest in an affiliated business.

### ***E-23. Payment to Out-of-State Brokers.***

A licensed Colorado broker who cooperates with a broker who is licensed in another state or country but is not licensed in Colorado may pay such out-of-state broker a finder's fee or share of the commission under these circumstances:

- (a) The broker licensed in the other state or country must reside and maintain an office in the other state or country. This rule shall also apply to payment made to citizens or

residents of a country which does not license real estate brokers if the payee represents that they are in the business of selling real estate in said country.

- (b) All advertising, negotiations, contracting and conveyancing done in Colorado must be performed in the name of the licensed Colorado broker.
- (c) All money collected from the parties to the transaction prior to closing shall be deposited in the name of the licensed Colorado broker according to Commission rules.

***E-24. Fraudulent application subject to discipline.***

A real estate licensee who procures or attempts to procure a real estate license by fraud, misrepresentation, deceit or by making a material misstatement of fact in an application for such license, will be subject to disciplinary action pursuant to 12-61-113, C.R.S., as amended.

***E-25. Continuing Duty to Disclose Conflict of Interest and License Status.***

When acting in a licensed capacity or when a licensee sells, buys or leases real property on the licensee's own account, such licensee shall have a continuing duty to disclose any known conflict of interest that may arise in the course of the transaction. In addition, when a licensee sells, buys or leases real property on the licensee's own account, such licensee shall disclose in the contracting instrument, or in a separate concurrent writing, that they are a licensed real estate broker.

A licensee acting as a property manager has a duty to disclose, in writing, any known conflict of interest that may arise in the selection or use of a business or vendor that provides services applicable to lease transactions, including property maintenance. The licensee is required to disclose any ownership, financial or familial interest associated with the selection or use of a particular business or vendor.

***E-26. Repealed.***

***E-27. No representation of future status of property.***

No licensee shall make misrepresentations regarding future availability or costs of services, utilities, character and/or use of real property for sale or lease of the surrounding area.

***E-28. Repealed.***

***E-29. Employing broker exercises authority, direction and control.***

The terms "employment", in the employ of", "employed", "employing", "placed under contract", or "engaged", as used in the licensing statutes (12-61-101 C.R.S. *et seq.*) and Commission Rules, shall refer to any contractual relationship by or between a real estate broker and another licensee, which may be with or without limitation as to the time, place, or manner of performance of the licensee's activities, but which shall not relieve the real estate broker from the statutory requirement that the real estate broker shall exercise authority, direction and control over licensee's conformance to the licensing statutes and Commission Rules in the performance of such licensee's activities pursuant to 12-61-103 (6)(c)(I) C.R.S., 12-61-113 (1) (o) C.R.S., 12-61-118 C.R.S., and Commission Rules. Whenever a complaint is filed with the Real Estate Commission against an employed licensee, the Commission shall cause an investigation to be made to ascertain whether there may have been a violation of 12-61-113(1)(o) C.R.S. by the employing real estate broker in failing to exercise a reasonable or high level of supervision over such licensee's activities with reference to the licensing statutes and Commission Rules. Such supervision, pursuant to 12-61-118 C.R.S. shall include all broker employees, including but not limited to secretaries, bookkeepers and personal assistants of licensed employees.



**E-30. Employing broker responsibilities.**

To ensure compliance with commission statutes and rules regarding supervision, employing brokers shall have the following responsibilities:

- (a) Maintain all trust accounts and trust account records;
- (b) Maintain all transaction records;
- (c) Develop an office policy manual and periodically review office policies with all employees;
- (d) Provide for a high level of supervision of newly licensed persons pursuant to rule E-32;
- (e) Provide for a reasonable level of supervision for experienced licensees pursuant to rule E-31;
- (f) Take reasonable steps to ensure that violations of statutes, rules and office policies do not occur or reoccur;
- (g) Provide for adequate supervision of all offices operated by the broker, whether managed by licensed or unlicensed persons.

**E-31. Reasonable supervision.**

Pursuant to section 12-61-113(1)(o), C.R.S., and in addition to the requirements of Commission Rule E-30 “reasonable supervision” of licensees with two or more years of experience shall include, but not be limited to, compliance with the following:

- (a) Maintaining a written office policy describing the duties and responsibilities of licensees employed by the broker. A copy of the written policy shall:
  - (1) be given to, read and signed by each licensee;
  - (2) be available for inspection, upon request, by any authorized representative of the Commission.
- (b) Reviewing all executed contracts in order to maintain assurance of competent preparation.
- (c) Reviewing transaction files to ensure that required documents exist.
- (d) Nothing in this rule shall prohibit an employing broker from delegating supervisory authority to other experienced licensees.
  - (1) Employed licensees who accept supervisory authority from an employing broker shall bear responsibility with the employing broker for ensuring compliance with the Commission statutes and rules by all supervised licensees.
  - (2) Any such delegation of authority shall be in writing and signed by the employed licensee to whom such authority is delegated. A copy of such delegation shall be maintained by the employing broker for inspection, upon request, by any authorized Commission representative.
  - (3) An employing broker shall not contract with any employed licensee so as to circumvent the requirement that the broker supervise employed licensees.

**E-32. High-level of supervision.**

In addition to the requirements of Rule E-31 and pursuant to section 12-61-103 (6)(c)(I) C.R.S., an employing broker shall provide a “high level of supervision” for licensed persons with less than two years experience as follows:

- (a) Provide specific training in office policies and procedures;
- (b) Be reasonably available for consultation;
- (c) Provide assistance in preparing contracts;

- (d) Monitor transactions from contracting to closing;
- (e) Review documents in preparation for closing;
- (f) Ensure that the employing broker or an experienced licensee attends closings or is available for assistance.
- (g) Nothing in this rule shall prohibit an employing broker from delegating supervisory authority to other experienced licensees.
  - (1) Employed licensees who accept supervisory authority from an employing broker shall bear responsibility with the employing broker for ensuring compliance with the Commission statutes and rules by all supervised licensees.
  - (2) Any such delegation of authority shall be in writing and signed by the employed licensee to whom such authority is delegated. A copy of such delegation shall be maintained by the employing broker for inspection, upon request, by any authorized Commission representative.

***E-33. Ministerial tasks.***

Following proper disclosure pursuant to 12-61-808 C.R.S., a broker engaged as a single agent for one party to a transaction may assist the other party by performing such ministerial tasks as showing a property, preparing and conveying written offers and counteroffers, making known the availability of financing alternatives and providing information related to professional, governmental and community services which will contribute to completion of the transaction and successful fulfillment of the agency. Performing such ministerial tasks shall not of themselves violate the terms of an agency relationship between a broker and a buyer, seller, tenant or landlord and shall not create an agency or transaction-broker relationship with the person being assisted.

***E-34. Purchase Offers Must Go to Listing Broker.***

A licensee must present all offers to purchase or lease to the owner's listing broker only if such owner has a written unexpired contract in connection with the sale or lease of real property which grants to the owner's listing broker an exclusive right to sell or lease. If a licensee has made reasonable, but unsuccessful, attempts to present an offer to purchase or lease to the owner's listing broker, the licensee must present the offer to the listing broker's employing broker or the employing broker's designee. If no employing broker exists, or if reasonable attempts to present the offer to the employing broker have failed, the licensee may present the offer directly to the owner.

***E-35. Brokerage relationship disclosure in writing.***

Written disclosures pursuant to C.R.S. 12-61-808 shall be made to a buyer or tenant prior to engaging in activities enumerated in C.R.S. 12-61-101 (2) and (3).

- a. For purposes of this rule, such activities occur when a licensee elicits or accepts confidential information from a buyer or tenant concerning the buyer's or tenant's real estate needs, motivation, or financial qualifications.
- b. Such activities do not include a bona fide "open house" showing, preliminary conversations or "small talk" concerning price range, location and property styles, or responding to general factual questions from a potential buyer or tenant concerning properties which have been advertised for sale or lease.

**E-36. Good funds at closing.**

Pursuant to 38-35-125, a real estate licensee who provides closing services shall not disburse funds or instruct an agent to disburse funds until those funds have been received and are either:

- (1) available for immediate withdrawal as a matter of right from the financial institution in which the funds have been deposited or
- (2) available for immediate withdrawal as a consequence of an agreement of a financial institution in which the funds are to be deposited or a financial institution upon which the funds are to be drawn. Such agreement with a financial institution must be for the benefit of the licensee providing the closing service. If the agreement contains contingencies or reservations no disbursements can be made until these are satisfied. (Statement of Basis and Purpose as adopted by the Real Estate Commission on October 5, 1988.)

**E-37. No fees to licensee/agent for legal document preparation.**

There is no obligation for a licensee to prepare any legal documents as part of a real estate transaction. However, if a licensee or the licensee's agent prepares any legal document, the licensee or the licensee's agent may not charge a separate fee for preparation of such documents. A licensee shall not be responsible for fees charged for the preparation of legal documents where they are prepared by an attorney representing the purchaser or seller. Costs of closing not related to preparation of legal documents may be paid by the licensee or by any other person. A broker who closes transactions and charges separately for costs of closing not related to the preparation of legal documents must specify the costs and obtain the written consent of the parties to be charged.

**E-38. Office Policy Contains Designation of Brokerage Relationship.**

For purposes of this rule, seller shall include landlord and buyer shall include tenant. Pursuant to CRS 12-61-802(1.5), an employing broker or employed broker must be designated in writing by the employing broker to serve as a single agent or transaction-broker for the seller or buyer. Employing brokers comply with the statute if they make such written designation, as appropriate to the broker's business, in an office policy that states:

1. listing contracts by single individual: that the individual broker entering into the listing contract is the seller's designated agent or designated transaction-broker, whichever is appropriate.
2. right to buy or tenant contracts by individual: that the individual broker entering into the right to buy or tenant contract is the buyer's designated agent or transaction broker, whichever is appropriate.
3. listing contracts by teams: that the individual team member(s) entering into the listing contract is the seller's designated agent or transaction-broker, whichever is appropriate, in which case that designation and brokerage relationship shall apply to all members of the team.
4. right to buy or tenant contracts by teams: that the individual team member(s) entering into the right to buy or tenant contract is the buyer's designated agent or transaction-broker, whichever is appropriate, in which case that designation and brokerage relationship shall apply to all members of the team.
5. individuals or teams working with both buyer and seller:
  - (a) that the individual(s) or team is a transaction-broker for both buyer and seller, or,
  - (b) that the individual(s) or team is a single agent for the seller or buyer, and that the other party is a customer.

6. substitute or additional brokers: that the employing broker reserves the right to substitute or add other designated brokers, as appropriate, which shall be disclosed to the buyer or seller.
7. transaction broker – written disclosure: that the broker working with a buyer or seller as a Transaction-Broker as a result of a written disclosure, is the designated broker for that buyer or seller.

**E-39. Office brokerage relationship policy must be written.**

Pursuant to 12-61-803 and 808 C.R.S., a broker shall adopt a written office policy which identifies and describes the relationships in which such broker and any employed licensee may engage with any seller, landlord, buyer or tenant as part of any real estate brokerage activities. A broker may adopt any policy suitable to the broker's business, subject to the following:

- a. An office policy shall apply to all licensees in the office;
- b. An office policy shall be given and explained to each licensee and shall be read, agreed to and signed by each licensee;
- c. An office policy shall, in a manner compliant with Commission Rule E-38, identify the procedures for the designation of brokers who are to work with a seller, landlord, buyer or tenant pursuant to 12-61-803(6), C.R.S., except office policies of real estate brokerage firms that consist of only one licensed natural person.
- d. An office policy shall identify and provide adequate means and procedures for the maintenance and protection of confidential information that:
  - (1) The seller or landlord is willing to accept less;
  - (2) The buyer or tenant is willing to pay more;
  - (3) Information regarding motivating factors for the parties;
  - (4) Information that a party will agree to other financing terms;
  - (5) Material information about a party not required by law to be disclosed;
  - (6) Facts or suspicions which may psychologically impact or stigmatize a property;
  - (7) All information required to be kept confidential pursuant to sections 12-61-804(2), 12-61-804(2), 12-61 805(2) and 12-61-807(3), C.R.S.
- e. An office policy may permit an employing broker to supervise a transaction and to participate in the same transaction as a designated broker.

**E-40. Double-ended brokerage relationships.**

A broker shall not enter into a brokerage relationship with one party as an agent and the other party as a transaction broker. A broker who works with both the buyer and seller in the same real estate transaction may do so as (1) a Transaction-Broker for both buyer and seller (2) a single agent for the seller, treating the buyer as a customer or (3) a single agent for the buyer, treating the seller as a customer. These options shall be disclosed and made a part of the agreement between the parties to the listing contract, right to buy contract or tenant contract, whichever is appropriate. (*Ed. Note: See 12-61-803(6)(d)*)

**E-41. Change of status disclosure in writing.**

A broker working with both the buyer and seller in the same real estate transaction who changes from working as a party's agent to assisting the parties as a Transaction-Broker shall either: check the box for "Transaction- Broker" and the box "This is a Change of Status" in the Commission-approved form, Contract to Buy and Sell Real Estate, if applicable, or provide the written "Change of Status (Transaction-Brokerage Disclosure)" to the party that has the changed relationship (seller and buyer) with the broker, at the time the broker begins

to assist as a Transaction-Broker, but not later than at the time the party signs the contract. For purposes of this rule, seller shall include landlord, and buyer shall include tenant.

**E-42. Notice Required on CMA's or BPOs for Other Than Marketing.**

When a real estate broker prepares a competitive market analysis (CMA) or a broker's price opinion (BPO) for any reason other than the anticipated sale or purchase of the property, the licensee must include a notice stating: "This evaluation was prepared by a licensed real estate broker and is not an appraisal. This evaluation cannot be used for the purposes of obtaining financing." Pursuant to 12-61-702(5)(b)(II), C.R.S, brokers are prohibited from completing CMA's or BPOs that are used for the purpose of obtaining financing.

**E-43. Square Footage Disclosure.**

This rule applies to transactions involving the sale and purchase of residences, new or existing. It requires the listing licensee to disclose the square footage of the floor space of the living area of the residence to the buyer and seller when a licensee disseminates such information, including submission to a multiple listing service. If the licensee personally measures or provides information from another source of measurement of the residence's square footage the licensee shall use the Commission approved form for such disclosure. The licensee listing the property is responsible for accurately representing any source of square footage.

- (a) *Licensee measurement.* A licensee is not required to measure the square footage of a property. If the licensee takes an actual measurement it does not have to be exact, however, the licensee's objective must be to measure accurately and calculate competently in a manner that is not misleading, and:
  - i. The standard, methodology or manner in which the measurement was taken must be accurately disclosed to the buyer and seller;
  - ii. The buyer and seller must be advised that the measurement is for purposes of marketing and is not a measurement for loan, valuation or any other purpose; and
  - iii. The buyer and seller must be advised that if exact square footage is a concern, the property should be independently measured.
- (b) *Other sources of square footage.* If a buyer or seller is provided information from another source for square footage, that source (whether an actual measurement, building plans, prior appraisals, assessors office, etc.) shall include the date of issuance if any and must be disclosed to the buyer and seller in writing by the licensee, in a timely manner. Such disclosure must be on the Commission approved form and must advise the recipient to verify the information. A licensee may not provide information to a person from a source known to be unreliable and is responsible for indicating obvious mismeasurement by others.
- (c) A licensee working with a buyer must advise that if exact square footage is a concern, the property should be independently measured. This requirement is fulfilled by the licensee supplying such buyer a copy of the Commission approved form for disclosing square footage.

**\* E-44. Actions when license is suspended, revoked, expired or inactive.**

Upon suspension, revocation, expiration or transfer to inactive status of a real estate license, the licensee is responsible for immediate compliance with the following:

- (1) Cease any activities requiring a license.
- \* (2) Return the license and pocket card to the commission. If an employing broker, inform all employed licensees of the change in license status and the effect of such change on the license status of those licensees.

- \* (3) Cease all advertising, including but not limited to, use of office signs, yard signs, billboards, newspapers, magazines, the internet, direct mailings, and multiple listing services.
- \* (4) Inform all owners, buyers and tenants of the action taken and the impact that the change in license status will have on any pending transaction. It is the responsibility of the employing broker to ensure that another broker is designated to perform the duties requiring a license in all pending transactions, or to release the affected parties from any listing contract(s) with the real estate brokerage.
- \* (5) If an independent broker:
  - \* a. Inform all owners, buyers and tenants of the action taken and the impact that the change in license status will have on any pending transaction.
  - \* b. Release the affected parties from any active listing contract(s) with the broker.
  - \* c. Instruct the affected parties to seek guidance from a licensed attorney or an actively licensed real estate broker regarding any pending transactions.
  - \* d. The broker is responsible for accounting for all funds and making all final disbursements. The broker is responsible for maintaining all records for four years.
- \* (6) If an employing broker:
  - \* a. The broker is personally responsible for the handling of any and all earnest money deposits, escrow or trust funds received or disbursed by the brokerage. The broker must account for all entrusted funds. A broker who will no longer be responsible for the licensed activities of the brokerage is responsible for returning all escrow records to the licensed brokerage and transferring all entrusted funds to the new employing broker.
  - \* b. The licensed brokerage must designate a qualified, active broker, who is approved by the Commission, to be responsible for the management and supervision of the licensed actions of the brokerage and all licensees shown in the Commission's records as being in the employ of the brokerage. Pursuant to 12-61-103(7)(c), C.R.S., the brokerage may also seek a temporary license to prevent hardship.
  - \* c. If the brokerage is unable to designate a qualified, active broker or is not granted a temporary license, the license of the brokerage will be placed on inactive status and all activities requiring a real estate broker's license must immediately cease.
  - \* d. An inactive brokerage will have seven (7) days to notify all owners, buyers and tenants of the impact the license status change will have on the employed licensees and all pending transactions. The broker is responsible for accounting for all funds, returning all escrow records to the licensed brokerage and making all final disbursements within thirty (30) days of the change in license status.
  - \* e. In the case of an employing broker who will not be replaced and the licensed brokerage will be dissolved, the employing broker is responsible for accounting for all funds and making all final disbursements within 30 days of the license status change. The employing broker is responsible for maintaining all records for four years.
- \* (7) Commissions or fees may be received by a licensee only for transactions where the commission or fee was earned prior to that licensee's suspension, revocation, expiration or transfer to inactive status.



**E-45. Supervising Broker – Confidential Information**

A designated broker shall be permitted to reveal to a supervising broker, and a supervising broker shall be permitted to receive, confidential information as authorized by the informed consent of the party the designated broker(s) is assisting or working with, without changing or extending the designated brokerage relationship beyond the designated broker. A supervising broker, for purposes of this rule, is a broker performing the responsibilities set forth in rules E-30, 31 and 32. Confidential information includes the information referenced in sections 12-61-804 (2); 805 (2) and 807 (3) C.R.S.

**E-46. Affiliated Business Arrangement Disclosures.**

Pursuant to 12-61-113.2(2)(b), C.R.S., a broker shall make the following disclosures:

1. Disclose in writing the existence of an affiliated business arrangement to the party they are referring at the time the referral is made. The disclosure shall be in a format consistent with the affiliated business arrangement disclosure promulgated by HUD pursuant to the Real Estate Settlement and Procedures Act.
2. At the time the contract to buy and sell is executed by the buyer and seller, the existence of an affiliated business arrangement with the broker or the employing broker shall be disclosed in writing to all parties to the transaction.
3. A broker is required to make the following disclosures to the Commission.
  - a. At the time a broker enters into or changes an affiliated business arrangement, the broker shall disclose the names of all affiliated business arrangements to which the broker is a party. The written disclosure shall include the physical location of the affiliated businesses.
  - b. On an annual basis, each employing broker shall disclose the names of all affiliated business arrangements to which the employing broker is a party. The written disclosure shall include the physical location of the affiliated businesses.

The Commission prefers that the written disclosures to the Commission be made through the Colorado Affiliated Business Online Services database which is accessible through the Division of Real Estate's website.

**E-48. Prohibited Remedies for Compensation.**

No licensee shall file a lien, a lis pendens or record a listing contract to secure the payment of a commission or other fee associated with real estate brokerage duties in a residential transaction. A licensee involved in a residential transaction shall not cause the title to a property to become clouded or otherwise interfere with the transfer of title when the licensee is not a principal in the transaction.

A broker, who has commercial real estate listed for sale and has provided licensed services that resulted in procuring a tenant who has leased any interest in the commercial real estate in accordance with the written agreement between the broker and the owner, may file a lien pursuant to 38-22.5-103, C.R.S. against the commercial real estate in the amount of the compensation set forth in the written agreement. If the commercial real property has been conveyed to a bona fide purchaser prior to the recording of the notice to lien as required by 38-22.5-104, C.R.S., a broker may not file a lien for a commission that is due as the result of a lease renewal.

Commercial real estate is defined as any real property other than real property containing one to four residential units, single-family or multi-family residential units including condominiums, townhouses, or homes in a subdivision when such real estate is sold, leased,

or otherwise conveyed on a unit-by-unit basis even though the units may be part of a larger building or parcel of real property containing more than four residential units.

***E-49. Immediate Notification of Conviction, Plea or Violation Required.***

A licensee shall make written notification to the Commission within 30 calendar days of any of the following:

- (a) A plea of guilty, a plea of nolo contendere or a conviction of any crime identified by 12-61-113(1)(m), C.R.S.
- (b) A violation or aiding and abetting in the violation of the Colorado or federal fair housing laws.
- (c) Any disciplinary action taken against a licensee in any other jurisdiction, if the licensee's action(s) would constitute a violation of the real estate license law in Colorado.
- (d) A suspension or revocation of a license, registration, or certification by Colorado or another state, within the last five years, for fraud, deceit, material misrepresentation, theft, or the breach of a fiduciary duty that denied the licensee the authorization to practice as a mortgage broker, a real estate broker or salesperson, a real estate appraiser, an insurance producer, an attorney, a securities broker-dealer, a securities sales representative, an investment advisor, or an investment advisor representative.

## **Commission Approved Forms**

Through the adoption and promulgation of Commission Rule F, it became compulsory for all real estate brokers licensed by the State of Colorado to use Commission approved forms in most of their contracting. 12-61-803(4) C.R.S. grants the Colorado Real Estate Commission statutory authority to promulgate standard forms for use by licensees.

One of the major purposes of the rule is to help to insure broker compliance with the Colorado Supreme Court Conway-Bogue decision. (See case summary in Chapter 6) A second purpose is to help promote uniformity in contracting to the end that the public is better protected. The privileges granted should not be abused by the real estate broker.

### **Rule F. Use of Commission Approved Forms**

***F-1. Permitted and Prohibited Form Modifications***

- (a) No modifications shall be made to a Commission-approved form by a broker except as provided in rules promulgated by the Commission and as set forth in this Rule F-1 through F-7. For purposes of Rule F-1 through F-7, the term "Commission-approved form" means any form promulgated by the Commission; the term "broker" shall also include brokerage firm.
- (b) A broker may add its firm name, address, telephone, e-mail, trademark or other identifying information on a Commission-approved form.
- (c) A broker may add initial lines at the bottom of a page of any Commission-approved form.
- (d) Any deletion to the printed body of a Commission-approved form, or any "Additional Provision" or "Addenda" which by its terms serves to amend or delete portions of the approved language, must result from negotiations or the instruction(s) of a party to the transaction and must be made directly on the printed body of the form by striking through the amended or deleted portion in a legible manner that does not obscure the deletion that has been made.

## *Chapter 2: Commission Rules and Regulations*

- (e) Blank spaces on a Commission-approved form may be lengthened or shortened to accommodate the applicable data or information.
- (f) Provisions that are inserted into blank spaces must be printed in a style or type that clearly differentiates such insertions from the style or type used for the Commission-approved form language.
- (g) A broker may omit part or all of the following provisions of a Commission-approved (changed font) “Contract to Buy and Sell Real Estate” (even if the provision is identified by a different Section number), or corresponding provisions in other Commission-approved forms, if such provisions do not apply to the transaction. In the event any provision is omitted, the provision’s caption or heading must remain unaltered on the form followed by the word “OMITTED”.
  - 1. Section 2.5 Inclusions in its entirety or any of its subsections
  - 2. Section 2.6 Exclusions
  - 3. Section 4.4 Seller Concessions
  - 4. Section 4.5 New Loan in its entirety or any of its subsections
  - 5. Section 4.6 Assumption
  - 6. Section 4.7 Seller or Private Financing
  - 7. Section 5 Financing Conditions and Obligations in its entirety or any of its sections
  - 8. Section 6 Appraisal Provisions in its entirety or any of its subsections
  - 9. Section 7.3 Homeowners’ Association Documents in its entirety or any of its subsections
  - 10. Section 8.4 Special Taxing Districts
  - 11. Section 8.5 Right of First Refusal or Contract Approval
  - 12. Section 10.6 Due Diligence Documents
  - 13. Section 10.7 Due Diligence Documents Conditions in its entirety or any of its subsections
  - 14. Section 10.8 Due Diligence—Environmental, ADA (CBS2, CBS3, CBS4)
  - 15. Section 10.7.3 Source of Potable Water (CBS4)
  - 16. Section 10.9 Existing Leases; Modification of Existing Leases; New Leases (CBS3, CBS4)
  - 17. Section 10.15 Existing Leases; Modification of Existing Leases; New Leases (CBS2)
  - 18. Section 11 Tenant Estoppel Statements in its entirety or any of its subsections (CBS2, CBS3, CBS4)
  - 19. Section 15.3 Status and Transfer Letter Fees
  - 20. Section 15.4 Local Transfer Tax
  - 21. Section 15.6 Sales and Use Tax
  - 22. Section 16.2 Rents
  - 23. Section 16.3 Association Assessments
- (h) A broker may add an additional page to the “Contract to Buy and Sell Real Estate”, “Counterproposal” and the “Agreement to Amend/Extend Contract”, following such document, that contains the dates and deadlines information set forth in § 3, arranged in chronological date sequence.

- (i) A broker may omit part or all of the following provisions of the “Counterproposal” and the “Agreement to Amend/Extend Contract” if such provisions do not apply to the transaction. In the event any provision is omitted, the provision’s caption or heading must remain unaltered on the form followed by the words “OMITTED”.
  - 1. Section 3 Dates and Deadlines table
  - 2. Section 4 Purchase Price and Terms [in the Counterproposal only]
- (j) A broker may substitute the term “Landlord” for the term “Seller” and the term “Tenant” for the term “Buyer” in the Brokerage Disclosure to Buyer form, in the Brokerage Disclosure to Seller and Definitions of Working Relationships form when making disclosures in a lease transaction (or use the separate Brokerage Disclosure To Tenant form) .
- (k) A broker may add signature lines and identifying labels for the parties signatures on a Commission-approved form.
- (l) A broker may modify, strike or delete such language on a Commission-approved form as the Commission may from time to time authorize to be modified, stricken or deleted.

***F-2. Additional Provisions***

- (a) The “Additional Provisions” section of a Commission-approved form must contain only those transaction-specific terms or acknowledgments that result from negotiations or the instruction(s) of the party(ies) to the transaction.
- (b) A broker who is not a principal party to the contract may not insert personal provisions, personal disclaimers or exculpatory language in favor of the broker in the “Additional Provisions” section of a Commission-approved form.

***F-3. Addenda***

- (a) If a broker originates or initiates the use of a preprinted or prepared addendum that modifies or adds to the terms of a Commission-approved contract form which does not result from the negotiations of the parties, such addendum must be prepared by:
  - (1) an attorney representing the broker or brokerage firm; or
  - (2) a principal party to the transaction; or
  - (3) an attorney representing a principal party.
- (b) An addendum permitted by this Rule F- 3 (a), shall not be included within the body of, or in the “Additional Provisions” section of, a Commission-approved form.
- (c) A broker who is not a principal party to the contract may not insert personal provisions, personal disclaimers or exculpatory language in favor of the broker in an addendum.
- (d) If an addendum is prepared by a broker’s attorney, the following disclosure must appear on the first page of the addendum in the same sized type as the size of type used in the addendum: “This addendum has not been approved by the Colorado Real Estate Commission. It was prepared by (insert licensed name of broker or brokerage firm’s) legal counsel.” Broker must retain the document prepared by broker’s attorney for 4 years from the date such addendum was last used by the Broker and provide said document and the name of the attorney or law firm that prepared the addendum to the Commission upon request,
- (e) If an addendum to a listing, tenant or right to buy contract, is prepared by a broker or brokerage firm, the following disclosure must appear on the first page of the addendum in the same sized type as the size of type used in the addendum: “This addendum has not been approved by the Colorado Real Estate Commission. It was prepared by (insert licensed name of broker or brokerage firm).”

**F-4. Prohibited Provisions**

No contract provision, including modifications permitted by Rules F-1 through F-3, shall relieve a broker from compliance with the real estate license law, section 12-61-101, et. seq., or the Rules of the Commission.

Pursuant to Rule E-12, when a written agreement contains a provision entitling the broker to a commission on a sale or purchase made after the expiration of the agreement, such provision must refer only to those persons or properties with whom or on which the broker negotiated during the term of the agreement, and whose names or addresses, were submitted in writing to the seller or buyer during the term of the agreement, including any extension thereof.

**F-5. Explanation of Permitted Modifications**

The broker shall explain all permitted modifications, deletions, omissions, insertions, additional provisions and addenda to the principal party and must recommend that the parties obtain expert advice as to the material matters that are beyond the expertise of the broker.

**F-6. Commission-Approved Form Reproduction**

- (a) Commission-approved forms used by a broker, including permitted modification made by a broker, shall be legible.
- (b) Brokers generating Commission-approved forms through the use of a computer shall ensure that a security software program is utilized that prevents inadvertent change or prohibited modification of Commission-approved forms by the broker or other computer user.

**F-7. Commission Approved Forms**

Ed. Note: The most current version of approved forms can be found on the Division of Real Estate website at: [www.dora.state.co.us/dre](http://www.dora.state.co.us/dre).

Real estate brokers are required to use Commission-approved forms as appropriate to a transaction or circumstance to which a relevant form is applicable. Commission-approved forms are posted on the Division of Real Estate's website. Effective June 2009, the Commission will no longer post forms in the Code of Colorado Regulations. The Commission hereby withdraws all forms from the Code of Colorado Regulations. In instances when the Commission has not developed an approved form within the purview of this rule, and other forms are used, they are not governed by Rule F. Other forms used by a broker shall not be prepared by a broker, unless otherwise permitted by law.

- \* To obtain the forms promulgated by the real estate commission that are within the purview of Rule F, visit the Division of Real Estate website at: <http://www.dora.state.co.us/dre> or the Division of Real Estate's offices at 1560 Broadway, Suite 925, Denver, Colorado 80202.

**Rule G. Brokers Acting Under 12-61-101(2)(a)(X), C.R.S. (Rental Referrals)**

**G-1. Repealed (1-6-00)**

- [(a) The funds may be withdrawn from the trust fund account at any time for the purpose of returning the funds to the payor thereof in accordance with the terms of the contract or receipt.
- (b) The funds may be withdrawn from the trust or escrow fund account when and if the broker reasonably believes the evidence available that said tenant has obtained a rental through information supplied by or on behalf of the broker.]

**G-2. Receipt for advance fees**

Pursuant to 12-61-113(1.5) C.R.S., every person licensed acting under 12-61-101(2)(a)(X) C.R.S. shall give a prospective tenant a contract or receipt. At the time of acceptance of an advance fee from a prospective tenant, a broker shall provide the prospective tenant with a written contract or receipt which shall include at least the following:

- (a) Name, business address and telephone number of the brokerage company.
- (b) Acknowledgment of receipt of advance fee.
- (c) A description of the services to be performed by the broker, including significant conditions, restrictions and limitations where applicable, and hours of operation.
- (d) The prospective tenant's specifications for the rental property, including but not limited to:
  - (1) Type of structure, *e.g.*, detached single family, apartment, duplex, condominium, mobile home, et cetera.
  - (2) Location by commonly accepted residential area name, by designation of boundary streets and municipality or in any other manner affording a reasonable means of identifying acceptable locations.
  - (3) Furnished or unfurnished.
  - (4) Number of bedrooms.
  - (5) Earliest occupancy date desired.
  - (6) Maximum acceptable monthly rental.
  - (7) Pets.
  - (8) Garage, carport or off-street parking.
- (e) Contract expiration date.
- (f) Date of execution.
- (g) Signatures of the prospective tenant, the broker, and if negotiated by a licensee in the employ of a broker, then the employed licensee shall sign on behalf of the employing broker.
- (h) The address and the phone number of the Real Estate Commission in prominent letters.
- (i) A statement that the regulation of rental location services is under the jurisdiction of the Real Estate Commission.
- (j) Recital in bold face and capitals that:

**IF THE INFORMATION CONCERNING RENTALS FURNISHED BY THE BROKER IS SHOWN TO BE NOT CURRENT OR ACCURATE IN REGARD TO THE TYPE OF RENTAL DESIRED, THE FULL FEE SHALL BE REPAYED OR REFUNDED TO THE PROSPECTIVE TENANT UPON WRITTEN DEMAND. CURRENT RENTALS HAVE BEEN VERIFIED AS TO AVAILABILITY WITHIN THE PAST FOUR BUSINESS DAYS.**

**G-3. Broker must retain copy of referral lists given in person**

Whenever the prospective tenant visits the broker's office, a list of all addresses given to the prospective tenant shall be prepared in duplicate. A copy shall be given to the prospective tenant and the original shall be retained by the broker for a period of 90 days and either affixed to the client's contract or receipt or be placed in the client's file if a separate file is kept. The list shall clearly indicate the following:

- (a) The date the addresses were furnished to the prospective tenant.



## *Chapter 2: Commission Rules and Regulations*

- (b) The type of unit, *e.g.*, detached single family residence, apartment, duplex, condominium, mobile home, etc.
- (c) Whether the unit is furnished or unfurnished.
- (d) The date when the unit will be available for occupancy.
- (e) The date when the unit was most recently entered on the agency's listing records.
- (f) The date when the housing accommodation was last verified by the agency to be available for rent.
- (g) The address and municipality of the housing accommodation.
- (h) The name and address of the property owner or their authorized agent and the telephone number, if available.
- (i) The monthly rent required by the landlord.
- (j) The number of bedrooms and total number of rooms.
- (k) Whether a written lease is required and, if so, the minimum lease term required by the landlord.
- (l) Any lawful restrictions as to pets, children, furnishings, occupants or activities imposed by the landlord.

### ***G-4. Repealed effective 1-1-97***

### ***G-5. Broker must retain copy of referral lists given by phone***

Where addresses are furnished to the prospective tenant by telephone or any other manner not requiring the prospective tenant's presence at the broker's office, the addresses shall be noted on the broker's copy of the list. The list shall indicate by which broker or employee of the broker the addresses were furnished and the broker's copy shall be retained for a period of one year.

### ***G-6. Advertising***

Each broker engaged in locating or assisting in locating rental properties for an advance fee shall abide by the following regulations regarding advertising practices:

- (a) Licensee shall make written registries, posted in a conspicuous place or otherwise disclosed to fee payors, of all advertisements or other publications published or caused to be published by the broker, together with address of each property advertised, the name of the party who offered the property for rent and his or her telephone, if any.
- (b) No property shall be advertised which has not been verified for availability four business days or less before said advertisement shall be printed.
- (c) Each property advertised for rent or lease through the use of any media form shall be assigned a code (and one code only) in accordance with a uniform coding system adopted by the broker, which code shall also appear in any media advertising placed by said broker. Coding of municipalities shall be included within the uniform system so as to be accurately reflected in media advertising.
- (d) A copy of all advertising submitted to any media group for publication (including television, radio, newspaper and mimeographed sheets), together with the name of the person submitting the same, shall be maintained by a broker for a period of one year after publication.
- (e) No licensee acting under 12-61-101(2)(a)(X), C.R.S. shall advertise or furnish a prospective tenant with the address of a prospective rental unless such licensee has received specific authorization to list said property from the owner or owner's authorized agent. Specific authorization may be by writing, signed by the owner or

owner's agent, or orally, if the broker notes the name of the owner or owner's agent, the date of authorization, and the telephone number of the person so authorizing.

***G-7. Grounds for finding unworthiness or incompetence***

Pursuant to 12-61-113(1)(n) C.R.S., a licensee acting under 12-16-101(2)(a)(X) C.R.S. shall be considered unworthy or incompetent in the conduct of their business where:

- (a) The licensee violates Rule G-6.
- (b) With particular respect to media advertising:
  - (1) The property is not actually located in the area represented.
  - (2) The rental price shown is less than that asked by the owner of the available property.
  - (3) The property is non-existent or cannot be verified as currently for rent by the licensee.
  - (4) The specifics of the property advertised differ materially from the property as it exists.
  - (5) A property is advertised in such a way or under such a heading as to indicate the property is of a different type than it actually is. The word "type" refers to such designations as: single family detached residence, duplex, apartment, condominium, townhouse, or mobile home.
- (c) The licensee fails or refuses to abide by the terms of the contract or receipt between himself and a prospective purchaser.
- (d) The broker fails or refuses to refund money pursuant to the terms of the contract or receipt.
- (e) The broker has failed to keep accurate records as specified in these rules or has failed to retain said records for the prescribed time periods.

**Rules H-1 Through H-26. Repealed.**

**Rule I. Declaratory Orders**

***I-1. Any person may petition for an order***

Any person [1] may petition the Commission for a declaratory order to terminate controversies or to remove uncertainties as to the applicability to the petitioner of any statutory provision or of any rule or order of the Commission.

**[1] refers to existing definition of "person" in APA, rule or statute, if any.**

***I-2. Commission determines whether to rule***

The Commission will determine, in its discretion and without prior notice to the petitioner, whether to rule upon any such petition. If the Commission determines it will not rule upon such a petition, the Commission shall issue its written order disposing of the same, stating therein its reasons for such action. A copy of such order shall forthwith be transmitted to the petitioner.

***I-3. Commission considerations***

In determining whether to rule upon a petition filed pursuant to this rule, the Commission will consider the following matters, among others:

- (a) whether a ruling on the petition will terminate a controversy or remove uncertainties as to the applicability to petitioner of any statutory provision or rule or order of the Commission;

## *Chapter 2: Commission Rules and Regulations*

- (b) whether the petition involves any subject, question or issue which is the subject of a formal or informal matter or investigation currently pending before the Commission or a court involving one or more of the petitioners which will terminate the controversy or remove the uncertainties as to the applicability to the petitioner of any statutory provision or of any rule or order of the Commission, which matter or investigation shall be specified by the Commission;
- (c) whether the petition involves any subject, question or issue which is the subject of a formal matter or investigation currently pending before the Commission or a court but not involving any petitioner which will terminate the controversy or remove the uncertainties as to the applicability to the petitioner of any statutory provision or of any rule or order of the Commission, which matter or investigation shall be specified by the Commission and in which petitioner may intervene;
- (d) whether the petition seeks a ruling on a moot or hypothetical question and will result in merely an advisory ruling or opinion;
- (e) whether the petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to rule 57, Colo. R. Civ. P., which will terminate the controversy or remove any uncertainty as to the applicability to the petitioner of the statute, rule or order in question.

### ***I-4. Petition contents***

Any petition filed pursuant to this rule shall set forth the following:

- (a) the name and address of the petitioner and whether the petitioner is licensed pursuant to C.R.S. 1973, 12-61-101, *et seq.*
- (b) the statute, rule or order to which the petition relates;
- (c) a concise statement of all the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the petitioner.

### ***I-5. Procedures if the Commission will rule***

If the Commission determines that it will rule on the petition, the following procedures shall apply:

- (a) the Commission may rule upon the petition based solely upon the facts presented in the petition. In such a case:
  - (1) any ruling of the Commission will apply only to the extent of the facts presented in the petition and any amendment to the petition;
  - (2) the Commission may order the petitioner to file a written brief, memorandum or statement of position;
  - (3) the Commission may set the petition, upon due notice to petitioner, for a non-evidentiary hearing;
  - (4) the Commission may dispose of the petition on the sole basis of the matters set forth in the petition;
  - (5) the Commission may request the petitioner to submit additional facts in writing. In such event, such additional facts will be considered as an amendment to the petition;
  - (6) the Commission may take administrative notice of facts pursuant to the Administrative Procedure Act (C.R.S. 1973, 24-4-105(8)) and utilize its experience, technical competence and specialized knowledge in the disposition of the petition;

- (7) if the Commission rules upon the petition without a hearing, it shall issue its written order, stating therein its basis for the order. A copy of such order shall forthwith be transmitted to the petitioner.
- (b) The Commission may, in its discretion, set the petition for hearing, upon due notice to the petitioner, for the purpose of obtaining additional facts or information or to determine the truth of any fact set forth in the petition or to hear oral argument on the petition. Notice to the petitioner setting such hearing shall set forth, to the extent known, the factual or other matters into which the Commission intends to inquire. For the purpose of such a hearing, to the extent necessary, the petitioner shall have the burden of proving all of the facts stated in the petition, all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to petitioner and any other facts the petitioner desires the Commission to consider.

***I-6. Parties to proceedings***

The parties to any proceeding pursuant to this rule shall be the Commission and the petitioner. Any other person may seek leave of the Commission to intervene in such a proceeding, and leave to intervene will be granted at the sole discretion of the Commission. A petition to intervene shall set forth the same matters as required by section 4 of this rule. Any reference to a “petitioner” in this rule also refers to any person who has been granted leave to intervene by the Commission.

***I-7. Orders subject to judicial review***

Any declaratory order or other order disposing of a petition pursuant to this rule shall constitute agency action subject to judicial review pursuant to C.R.S. 1973, 21-4-106.

**Rule J. Repealed**

**Rule K. Exceptions and Commission Review of Initial Decisions**

***K-1. Written Form, Service and Filing Requirements***

1. All Designations of Record, Requests, Exceptions and Responsive Pleadings (“Pleadings”) must be in written form, mailed with a certificate of mailing to the Commission.
2. All Pleadings must be filed with the Commission by 5:00 p.m. on the date the filing is due. These rules do not provide for any additional time for service by mail. Filing is in receipt of a pleading by the Commission.
3. Any Pleadings must be served on the opposing party by mail or by hand delivery on the date which the Pleading is filed with the Commission.
4. All Pleadings must be filed *with the Commission* and not with the Office of Administrative Courts. Any Designations of Record, Requests, Exceptions or Responsive Pleadings filed in error with the Office of Administrative Courts will *not* be considered. The Commission’s address is:

Colorado Real Estate Commission  
1560 Broadway, Suite 925  
Denver, CO 80202

***K-2. Authority to review***

1. The Commission hereby preserves the Commission’s option to initiate a review of an initial decision on its own motion pursuant to § 24-4-105(14)(a)(II) and (b)(III), C.R.S.

## *Chapter 2: Commission Rules and Regulations*

outside of the thirty day period after service of the initial decision upon the parties without requiring a vote for each case.

2. This option to review shall apply regardless of whether a party files exceptions to the initial decision.

### ***K-3. Designation of record and transcripts***

1. Any party seeking to reverse or modify the initial decision of the administrative law judge shall file with the Commission a designation of the relevant parts of the record for review (“Designation of Record”). Designations of Record must be filed with the Commission within twenty days of the date on which the Commission mails the initial decision to the parties’ address of record with the Commission.
2. Even if no party files a Designation of Record, the record shall include the following:
  - a. All pleadings;
  - b. All applications presented or considered during the hearing;
  - c. All documentary or other exhibits admitted into evidence;
  - d. All documentary or other exhibits presented or considered during the hearing;
  - e. All matters officially noticed;
  - f. Any findings of fact and conclusions of law proposed by any party; and
  - g. Any written brief filed.
3. Transcripts: Transcripts will not be deemed part of a Designation of Record unless specifically identified and ordered. Should a party wish to designate a transcript or portion thereof, the following procedures will apply:
  - a. The Designation of Record must identify with specificity the transcript or portion thereof to be transcribed. For example, a party may designate the entire transcript, or may identify witness(es) whose testimony is to be transcribed, the legal ruling or argument to be transcribed, or other information necessary to identify a portion of the transcript.
  - b. Any party who includes a transcript or a portion thereof as part of the Designation of Record must *order* the transcript or relevant portions by the date on which the Designation of Record must be filed (within twenty days of the date on which the Commission mails the initial decision to the parties).
  - c. When ordering the transcript, the party shall request a court reporter or transcribing service to prepare the transcript within thirty days. The party shall timely pay the necessary fees to obtain and file with the Commission an original transcription and one copy within thirty days.
  - d. The party ordering the transcript shall direct the court report or transcribing service to complete and file with the Commission the transcript and one copy of the transcript within thirty days.
  - e. If a party designates a portion of the transcript, the opposing party may also file a Supplemental Designation of Record, in which the opposing party may designate additional portions of the transcript. This Supplemental Designation of Record must be filed with the Commission and served on the other party within ten days after the date on which the original Designation of Record was due.
  - f. An opposing party filing a Supplemental Designation of Record must order and pay for such transcripts or portions thereof within the deadlines set forth above. An opposing party must also cause the court reporter to complete and file with the Commission the transcript and one copy of the transcript within thirty days.

- g. Transcripts that are ordered and not filed with the Commission in a timely manner by the reporter or the transcription service due to non-payment, insufficient payment or failure to direct as set forth above will not be considered by the Commission.

***K-4. Filing of Exceptions and Responsive Pleadings***

1. Any party wishing to file exceptions shall adhere to the following timelines:
  - a. *If no transcripts are ordered*, exceptions are due within thirty days from the date on which the Commission mails the initial decision to the parties. Both parties' exceptions are due on the same date.
  - b. *If transcripts are ordered by either party*, the following procedure shall apply. Upon receipt of transcripts identified in all Designations of Record, the Commission shall mail notification to the parties stating that the transcripts have been received by the Commission. Exceptions are due within thirty days from the date on which such notification is mailed. Both parties' exceptions are due on the same date.
2. Either party may file a responsive pleading to the other party's exceptions. All responsive pleadings shall be filed within ten days of the date on which the exceptions were filed with the Commission. No other pleadings will be considered except for good cause shown.
3. The Commission may in its sole discretion grant an extension of time to file exceptions or responsive pleadings, or may delegate the discretion to grant such an extension of time to the Commission's designee.

***K-5. Request for Oral Argument***

1. All requests for oral argument must be in writing and filed by the deadline for responsive pleadings.
2. It is within the sole discretion of the Commission to grant or deny a request for oral argument. If oral argument is granted, both parties shall have the opportunity to participate.
3. Each side shall be permitted ten minutes of oral argument unless such time is extended by the Commission or its designee.